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KIRK VARNEDOE ON ART, LAW, AND ETHICS

ORIGINAL PRINT OR 19TH-CENTURY COPY? HOW TO TELL

DE YOUNG "RABBI" RETURNED AFTER 20 YEARS: NO LONGER A "REMBRANDT"

INCORPORATING Stolen Art Alert

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Editor in Chief: Sharon Flescher
Editor: Kathleen Ferguson
Design: Stephanie Bart-Horvath

International Foundation for Art Research (IFAR)
500 Fifth Avenue, Suite 1234, New York, NY 10110
Tel: (212) 391-6234 Fax: (212) 391-8794 www.ifar.org

Executive Director: Sharon Flescher
Assistant to the Director: Kathleen Ferguson
Consultant, Authentication Service: Virgilia Pancoast Klein

Research Associates
Clara G. Bronson, Hermine Chivian-Cobb, Paul Crenshaw, Lisa Goldberg, Anne W. Lowenthal, Margaret I. O'Brien, Adrian V. Sudhalter, Gertrude Wilmers

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IFAR Journal
INTERNATIONAL FOUNDATION FOR ART RESEARCH

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Stolen Art Alert

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TO THE EDITOR:

Re: "Expert Art Opinions and Liabilities" by Judith Bresler (*IFAR Journal*, Summer 1999)

This article provides an overly optimistic view of the world of art scholars and other experts.

The article notes that the "commentator is empowered to speak quite freely—provided he or he strictly adheres to a few legal mandates." And, that "if the art professional adheres to these prescriptives—and common sense dictates that any art professional should do so as a matter of course,—then he or she...should feel free to express opinions about artworks without fear of reprisal from the law."

As President of The Pollock-Krasner Foundation, whose affiliate authenticated paintings by Jackson Pollock and Lee Krasner and has been sued for its opinions three times in the past six years, I have seen these lawsuits begun (and successfully defended at considerable expense), despite utilization by the Foundation of well-crafted protective agreements holding us harmless for careful opinions on authenticity.

The ease with which a claim can be made, the high probability of these claims, and the cost and stress to the scholar, even when successful, suggest something more needs to be done to protect freedom of scholarly opinion.

E.V. Thaw
President, The Pollock-Krasner Foundation

TO THE EDITOR:

Re: "Doctor Gachet—Friend of Cézanne and Van Gogh" by Walter Feilchenfeldt (*IFAR Journal*, Summer 1999)

This article gives a controversial interpretation of Gachet's care for van Gogh. He writes "Anyone familiar with Vincent's biography and his suicide in July 1890 will be puzzled by Gachet's decision not to remove the bullet from the artist's body, as most people think he should have at least tried to do, and which would probably have saved the artist's life." Readers may benefit from further information.

In 1891, nine years prior to van Gogh's sad demise, the case of President Garfield showed how futile and unnecessary it is to search for a bullet after the initial injury. Bullets do not continue to wander about. The problem is the extent of injury. Garfield was shot in the back. His doctors probed all about the wound, but never found the bullet, and only succeeded in infecting him and making his 80-day illness more miserable. After he finally succumbed, an autopsy indicated the cause of death was bleeding from the splenic artery.[1]

In the case of Vincent, Gachet's conversation with the family probably went something like this: "Poor Vincent tried to end it all with a shot to the heart, but even in this he did not succeed. He missed his target. I have examined the area carefully, even with a probe. At the level of the left lower ribs, near the axillary line, there is a small, dark red area, which is the entry wound from the bullet. The bullet probably lies somewhere near the major blood vessels, the aorta and vena cava, low in the chest. He was able to walk back to his room, is not having trouble breathing and is not coughing up blood, which indicates the lungs are not involved. Since there does not seem to be any sign of imminent danger, let us just place him under observation for change."[2]

This was 1890, five years before Roentgen discovered x-rays. There was no way to visualize the injured area short of surgery. But surgery would have been extremely hazardous and Gachet was not a surgeon. There were no facilities for this in the countryside. Few, if any, surgeons would want to undertake such a complex, difficult case in Paris. Transportation to the city would add risks. A long operation under general anesthesia with ether was another risk. The chest and the abdomen would both have to be explored.

As with Garfield, Vincent probably died from internal bleeding due to slow leakage from the spleen. Theoretically, this organ could have been removed or its blood supply tied off. Although there is no evidence that Gachet considered this diagnosis, let us not be too harsh on him. The diagnosis was difficult and the risks of surgery were very high. Vincent wished to be left alone in peace.

James G, Ravin MD, MS
The Eye Center of Toledo

[1] Stevens, Ralph L. "A president's assassination." JAMA 1981; 246: 1673-74.
[2] Amalric, Pierre: "Comment est mort van Gogh." Revoir 1991 (#549); 6-7.

TO THE EDITOR:

I read with great interest the article entitled **"Surfing the Web: An IFAR Perspective" by Marilyn Schmitt (*IFAR Journal*, Summer 1999)**. I note that you plan to publish occasional updates. In doing this you might like to consider under "Art and the Law" including the Heritage Law Bibliography (otherwise known as HERB). I established this database in 1991 and still maintain it —there are now some 7000 entries with a further 800 or so to be added by the end of May 2000. It is available on http://www.chin.gc.ca/Resources/Research which is a Canadian Heritage Information Network site. It covers heritage law in general and so includes much that is not art law as such but I consider that virtually all major articles, books, and cases on art law in English, French, German, Italian, and Spanish are included.

Patrick O'Keefe

IFAR welcomes letters. However, we cannot publish all letters received and reserve the right to edit those we do for length and clarity. Please keep letters brief.

In Memoriam
Lawrence James Majewski

[IFAR Art Advisory Council, 1970-1999
IFAR Board of Directors, 1980-1988]

Lawrence J. Majewski (or Larry, as he was known), former Chairman and Hagop Kevorkian Professor of the Conservation Center, Institute of Fine Arts, died of leukemia at his Wappingers Falls home on December 2, 1999.

Professor Majewski studied chemistry and biology before entering service during World War II. After the war, he turned to studies in art and completed his B.F.A. and M.F.A. at Yale University. His dual interests in art and conservation led him first into painting conservation at the Metropolitan Museum of Art in 1952. In 1953 he was recruited to help with the conservation of the Byzantine mosaics in Istanbul, which led to his appointment as Deputy Director of the Byzantine Institute of America in Istanbul, Turkey, from 1956 to 1960.

In 1960, he returned to the United States to join the staff of the Conservation Center, Institute of Fine Arts, New York University, the first degree-granting American conservation training program. He was appointed Chairman in 1966 and actively served as a member of the faculty until his retirement in 1986. After 1986 he continued to teach and advise students in his role as the Hagop Kevorkian Professor Emeritus of Conservation.

Throughout his career, Professor Majewski provided advice, support, and service to conservation education, archaeology, and heritage management. In 1964 he was appointed chief conservator of the archaeological expedition to Sardis for Harvard University. He kept that position for 25 years, teaching dozens of students in the field. In 1966 he organized and led a group of 17 American conservators to aid in the rescue effort just after the devastating flood in Florence. He served as consultant to a wide variety of international projects, including the Buddhist Shrine of Borobodur (Indonesia) in 1973 and the Ajanta Caves (India) in 1975, and was an advisor to numerous projects in Venice and Poland. He also actively worked as a member of the ICOM Working Group on icons and the ICCROM Group on mosaics, as well as Editor for *Art and Archaeology Technical Abstracts* for almost two decades. Always intrigued by forgeries or, conversely, unidentified masterpieces, he served on the Art Advisory Council of the International Foundation for Art Research (IFAR) for 29 years and as a member of its Board of Directors from 1980-88. He was a Fellow of the International Institute for Conservation for over 30 years and in 1987 was appointed Honorary Fellow of the American Institute for Conservation, an organization he helped to incorporate in 1971. In 1993 the first John Langeloth Loeb Award was conferred on him by the Trustees of the Institute of Fine Arts in recognition of his devotion to the Conservation Center and its students. Shortly before his death, he was honored by the Archaeological Institute of America. Larry Majewski was a generous, humane, and, above all, pragmatic scholar. His practicality ranged from his recommendations for examining works of art—never be intimidated by purported authorship or distracted by impressive provenance—to his advice for impoverished graduate students—always order pancakes to get the most filling food for the least amount of money. He was a connoisseur who could spot a treasure at Christie's, among sidewalk trash, or in two now-defunct haunts—the Pagoda Book Shop on Fourth Avenue and Mrs. Potter's thrift shop on Madison Avenue. Perfectly comfortable in the Istanbul spice market and the Ajanta Caves of India, he could examine rare etchings, detect fake ivory with a red-hot needle, and stir both slaked lime and eggnog with equal facility.

As a professor, Larry taught by example, and the results are best reflected in the accomplishments of his students. Where they have gone and what they now do are a testament to the diversity of his interests and his versatile command of all facets of conservation. Many remember peering over his shoulder as he, often in the company of Harry Bober, examined paintings for IFAR, eagerly absorbing his running commentary that leapt across far-flung disciplines in a single bound.

His enduring spiritual and material benevolence will be remembered forever. Always ready with a word of encouragement or money for a token, Larry's generosity was legendary. His stewardship of good works and words on behalf of conservation serves as a model for us all to emulate.

Margaret Holben Ellis
Sherman Fairchild Chairman
Conservation Center, Institute of Fine Arts, New York University
Member, Art Advisory Council, IFAR

BRITISH MUSEUMS LIST WORKS WITH PROVENANCE GAPS FOR WWII YEARS

U.S. MUSEUMS FOLLOW SUIT

PROBLEMATIC WORKS LISTED ON WEBSITES

A massive provenance research project to uncover Nazi-era looted art housed in British museums culminated on February 29 when twenty-three British museums and galleries announced their initial findings. Three hundred fifty works in ten of the museums were found to have uncertain, missing, or otherwise problematic provenance during the crucial years of 1933-45. The works included some of the most famous paintings in Great Britain by artists such as Rubens, Delacroix, Munch, Renoir, Courbet, and Cézanne. Thirteen of the museums had no problematic works.

Officials were quick to point out, however, that inclusion on the list did not necessarily mean the works had been looted from Holocaust victims, but, rather, that there were unexplained gaps in provenance or that the provenance contained the name of someone

Inclusion on the list does not necessarily mean the works were looted . . .

known to have done business with the Nazis. It is hoped that additional research will clear up most questions.

The research was spurred by a 1998 decision of the National Museum Directors' Conference (NMDC) to examine all works in British government collections so as to assist with the "worldwide search for works of art which may have been looted during the Holocaust and World War II." In making the findings public and listing them on the Internet, the NMDC hoped not only to make the problematic works known to interested parties, but to solicit additional information.

Hieronymous Bosch (Dutch, 1474-1516). *Christ Mocked (The Crowning with Thorns).* 73.5 x 59.1 cm. One of the works cited as having questionable provenance. Photo courtesy of The National Gallery, London.

Website: http://www.nationalmuseums.org.uk/spoilation.html

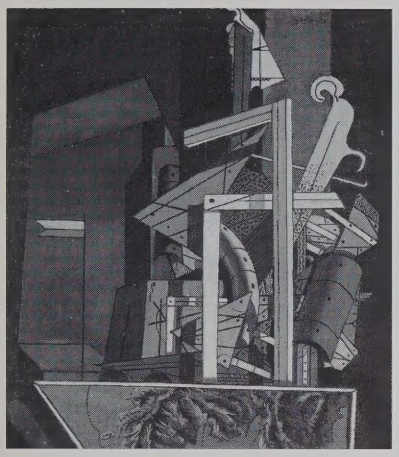
The website is almost 300 pages long (67 pages, 109 items just for the National Gallery in London; 54 pages and 80 items for the Tate). It is organized by country, museum, and then object. Currently there are no on-screen images. Complete provenance history is given, with gaps highlighted and further research outlined. The report is a primer for anyone unfamiliar with provenance research. Indeed, it is an example of the complexity and time-consuming nature of provenance research (the project took a year), even when the focus is limited to a 12-year period and carried out by trained museum staff.

The website list is almost 300 pages long—67 pages, 109 items just for the National Gallery in London

Response

No sooner was the report released than critics on different sides of the Holocaust restitution issue weighed in. On the one hand, advocates of restitution pointed out that the government panel that will now mediate ownership claims stemming from the research is not legally empowered to settle the claims or pay compensation. Indeed, British law would have to be changed to allow works from a British museum to be given back. But, according to Lord Janner of the Holocaust Educational Trust, as

Peter Paul Rubens (Flemish, 1577-1640). *The Judgment of Paris.* Oil on panel. 133.9 x 174.5 cm. One of the works cited as having questionable provenance. Photo courtesy of The National Gallery, London.



Giorgio De Chirico (Italian, 1888-1978). *The Melancholy of Departure*, 1916. Oil on canvas. One of the works cited as having questionable provenance. Photo courtesy of the Tate Gallery, London.

reported in *The London Times*, "Those [claimants] are entitled to full return of their stolen goods. . . . I do not believe that any English museum wishes to have on its walls works

Critics point out that some works will be unnecessarily tainted, since many gaps in provenance will never be filled in.

which have been stolen or extorted under duress."

Others, however, point out that some works will be unnecessarily "tainted," since many gaps in provenance may never be filled in, given an art world where sales have often been transacted by handshake, and also because of the loss of evidence during the war.

Meanwhile, in the U.S.

Museums in the United States have also begun provenance searches of their collections per guidelines set by the American Association of Art Museum Directors and the American Association of Museums. However, the results are incomplete and are just starting to be made public. Several museums, including the National Gallery, the MFA Boston, the Art Institute of Chicago, the Metropolitan Museum, MoMA, and The Cleveland Museum of Art, have published their initial research on their websites.

As *IFAR Journal* went to press, some museums had announced the discovery of possibly problematic works. These include:

- Courbet's *Rock at Hautepierre*, an oil painting of 1869 in the Art Institute of Chicago
- a 15th century *Madonna and Child* in the Los Angeles County Museum of Art

The LACMA painting was red-flagged because Hans Wendland, a dealer known to have handled looted art for the Nazis, figures in the provenance. The museum will do additional research. The Chicago Courbet was once owned by Max Silberberg, a German Jewish collector who was killed at Auschwitz. Recently, Silberberg's daughter-in-law, Gerta, regained a Van Gogh drawing from the Prussian Heritage Foundation in Berlin, and arranged a settlement with the Israel Museum in Jerusalem regarding a Pissarro oil painting. Both works once belonged to her father-in-law. The Chicago museum is said to be in discussions with her about the Courbet. Meanwhile, a portrait by Rubens in the Metropolitan Museum thought to have been problematic is not. Additional research by the museum showed that the painting had belonged to an American in Newark, New Jersey by 1924, at least 9 years prior to the start of Nazi confiscation of Jewish-owned collections. Another

Edgar Degas (French, 1834-1917). *Woman in a Tub*, ca.1883. Pastel on paper. One of the works cited as having questionable provenance. Photo courtesy of the Tate Gallery, London.

painting in the Met, by David Teniers the Younger, was red-flagged in a Reuters report, but it turned out *not even to be problematic.* It had been returned to its owner after WWII and was later donated to the museum.

—S.F.

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What has not been made public until now, however, is that the same mysterious caller also telephoned IFAR that week, on November 5th.

THREE STOLEN PAINTINGS BACK AT THE DE YOUNG MUSEUM AFTER 21 YEARS:

REMBRANDT'S RABBI DE-ATTRIBUTED. MYSTERIOUS CALLER CONTACTS IFAR

February 10 was a special day at the de Young Museum in San Francisco. Twenty-one years after they were stolen in a daring Christmas Eve burglary, three paintings were returned. A fourth stolen painting is still missing. Although badly damaged, the paintings were put on temporary view in the same gallery where they hung originally. They will undergo major restoration and examination later this year.

Figure 1. Follower of Rembrandt (Dutch, 17th century). *Portrait of a Man with Red Cap and Gold Chain* (*Portrait of a Rabbi*). Oil on canvas. 31" x 25 1/2". Signed and dated "Rembrandt, 1657." Recovered.

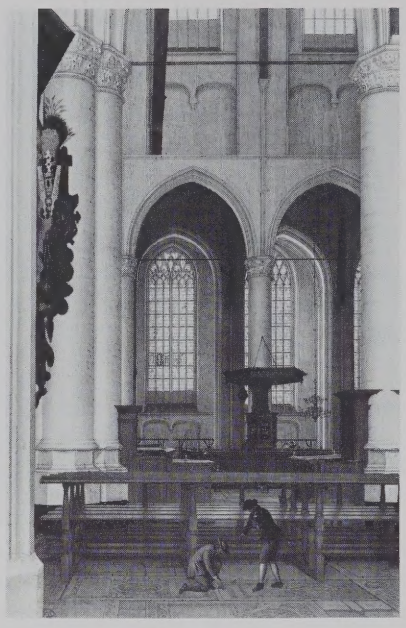

Figure 2. Anthonie de Lorme (Dutch, c.1610-73). *Interior of the Church of St. Lawrence, Rotterdam*. Oil on panel. 37 1/4" x 25 1/4". Recovered.

The recovered works are:

- *Portrait of a Man with Red Cap and Gold Chain* (known as *Portrait of a Rabbi*). Once attributed to Rembrandt, but now labeled "Follower of Rembrandt," the painting is signed and dated "Rembrandt, 1657." Oil on canvas. (Fig. 1)
- *Interior of the Church of St. Lawrence, Rotterdam.* Anthonie de Lorme. (c. 1610-1673) Oil on panel. (Fig. 2)
- *River Scene at Night.* Attributed to Aert van der Neer (1603-1677) Oil on panel. (Fig. 3)

Not recovered is a small *Harbor Scene* by Willem van de Velde dated 1631 (9" x 13"). (Fig. 4)

The theft was headline news in 1978, and three of the four paintings (all but the van der Neer) made Interpol's "Twelve Most Wanted Works of Art" in 1979. They also made the cover of IFAR's very first issue of the *Art Theft Archive Newsletter*, January 1979, and again in November 1979, as well as the cover of IFAR's *Stolen Art Alert* two years later under the headline: "Rembrandt Search Continues." Atypically, the thieves stole the paintings in their frames, and, curiously, failed to take another Rembrandt hanging in the same museum gallery. The "Rembrandt" they did take was the target of a foiled burglary attempt earlier the same year. In the years since the theft, no trace of the paintings was ever reported to any of the investigating agencies or to the museum.

It is perhaps not a coincidence that this is the third recovery within the past year of a major 1978 art theft

The paintings' recovery came about suddenly and mysteriously. They were left in William Doyle Galleries in New York November 2, 1999 by a man wearing a wig, who took advantage of Doyle's "Walk-in Tuesdays," a public event whereby works may be brought in free-of-charge for evaluation, and left the paintings in a crate in the lobby. The crate went unnoticed until an anonymous caller alerted Doyle's, which, in turn, alerted the police who opened the box containing the three paintings, unframed, and a note indi-

Figure 3. Attributed to Aert van der Neer (Dutch, 1603-77). *River Scene at Night*. Oil on panel. 22 1/8" x 32 1/4". Recovered.

cating that they had been stolen from the de Young Museum. The police contacted the FBI, and Doyle's contacted the museum.

What has not been made public until now, however, is that the same mysterious caller also telephoned IFAR that week, on November 5. Apparently concerned that because of the lack of initial publicity Doyle's might not do the "right thing" and return the paintings to San Francisco, the caller phoned IFAR and asked for the Executive Director. She was not in, and Kathleen Ferguson took the call. Disguising his voice and identifying himself as "Carl La Fung(?)," the caller told Ms. Ferguson that he had left the works at Doyle's and wanted IFAR to make sure that they would be returned to the museum. The caller indicated that he had acquired the paintings (overly restored and damaged) from the original thieves and fearing retribution and prosecution, never knew what to do with them. He wanted to meet with IFAR's Executive Director and said that he would call back. Ms. Ferguson suggested he also call the Art Loss Register. He did, and the ALR and IFAR both alerted the FBI to the incident. He called IFAR again a few days later, after stories about the paintings appeared. He wanted IFAR to know that the paintings were "on their way to the museum in San Francisco." He added that he "felt [he] did the right thing. This is my last call, and you're not going to hear from me again." We did not. The FBI's investigation is ongoing. The theft itself remains unsolved.

It is perhaps not a coincidence that this is the third recovery within the past year of a major 1978 art theft, the other two being:

- Pissarro's *Bassins Duquesne et Berrigny à Dieppe*, stolen from the home of Mr. and Mrs. Robert Stoddard in Worcester, Massachusetts and recovered in Cleveland, Ohio in October 1998. (See *IFAR Journal*, Vol II, nos. 1 and 2.) Eight other paintings and a Ming vase from the theft are still missing.

- Cézanne's *Still Life: Bouilloire et Fruits*, stolen in Lenox, Massachusetts from Dr. Harry Bakwin and recovered in Europe in 1999. (See inside back cover of this Journal issue.) Six other paintings from the theft are still outstanding.

It is possible that in all three cases the thieves felt that sufficient time had passed to dim memories; or, alternatively, that even after all this time, it was impossible to unload the art. If the latter is true, then IFAR's initial premise in launching its pioneering stolen art registry in 1977 might indeed been proving true—that publicity about art thefts and establishment of a search mechanism would make it difficult to traffic in stolen art.

When the de Young theft occurred, the *Portrait of a Rabbi* was generally attributed to Rembrandt and was valued at $1,000,000.

Figure 4. Willem van de Velde (Dutch, 17th century). *Harbor Scene*, 1631. Oil on panel. 9" x 13". Still missing.

Reattribution:

When the de Young Museum theft occurred, the *Portrait of the Rabbi* was generally attributed to Rembrandt and was valued at $1,000,000. *IFARreports* and other publications listed the work as a Rembrandt. But the painting is no longer considered to be by Rembrandt, and the attribution has now been changed by the Fine Arts Museums of San Francisco.

The "Rabbi" entered the de Young collection in 1948, at which time the great Rembrandt scholars Wilhelm Valentiner and Jakob Rosenberg studied it and subjected it to the latest technological tools. They declared the

work authentic. Indeed, it is signed "Rembrandt," and its broad painterly style, deep tonalities, and subject recall the Dutch master's work. It had been accepted as a Rembrandt by Abraham Bredius in his classic study, *The Paintings of Rembrandt*, 1935. But, in 1971, when the scholar Horst Gerson published his revision of the Bredius catalogue raisonné, he questioned the painting's attribution, saying: "I am not convinced at all that Br. 259A is the real original Rembrandt." The painting was stolen only a few years later, before the Rembrandt Research Project or others could assess the reattribution. The Fine Arts Museums of San Francisco (which include the de Young Museum) intend to do that now. But the curator, Dr. Lynn F. Orr, has already reattributed the work to a "follower of Rembrandt" and has told IFAR that the work lacks "the tonal subtleties, the personality characterizations, and the spatial development" of a true Rembrandt. Moreover, it can be contrasted in quality with a verifiable Rembrandt in the same room, a portrait of *Joris de Caulerij*, dated 1632, she added.

. . . in 1968, when the scholar Horst Gerson revised the Bredius catalogue raisonné, he questioned the painting's attribution

Since the 1978 theft, Rembrandt's entire body of work has undergone a reevaluation; the corpus attributed to him has been considerably reduced; and our knowledge of his working methods and that of his students and followers has expanded enormously. The Rembrandt Research Project in Holland has published four volumes of its research, and the 1995 exhibition at the Metropolitan Museum of Art, "Rembrandt, not Rembrandt", drew public attention to the challenge of Rembrandt attributions. Methods of scientific testing have also advanced during this period. The San Francisco museum intends to make use of this—particularly infrared reflectography, which allows specialists to see beneath the paint layers to detect underdrawing and alterations.

The three recovered works are in bad condition. They have apparently been subjected to dramatic changes in climate and were probably kept in a damp climate. Curator Lynn Orr has described a "milky rectangle" on the figure of the Rabbi . . . and told IFAR that "the original canvas is pulling off from its lining. Over the next year, the museum will do the conservation."

But, according to Dr. Orr, the museum felt it was important to display the works immediately even with the attributions still in question and in damaged condition. "It shows that a museum is a functioning institution, that there's a whole lot of activity that goes on beyond exhibitions—the conservation work, the technical and analytic studies to see whether the painting once attributed to Rembrandt can be attributed to one of Rembrandt's followers. These poor pictures have been through a lot. It will be a long process."

—S.F.

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BREAKING NEWS

LAWSUIT AGAINST POLLOCK-KRASNER AUTHENTICATION BOARD DISMISSED

JUDGE FINES PLAINTIFF AND ATTORNEY

NY State Supreme Court Justice, Emily J. Goodman, dismissed a lawsuit against the Pollock-Krasner Authentication Board for failing to accept a painting as an authentic work by Jackson Pollock. The painting, *Vertical Infinity,* had been submitted to the Board for review in 1994. The Board rejected it. The owner sued, despite a "hold harmless" clause in the Board's contract. In dismissing the case and fining the plaintiff and his lawyer $10,000 each, Judge Goodman called the suit a "laughable and clumsy attempt at fraud." She granted the Board's counterclaims for damages, including the cost of litigation. This is the third unsuccessful lawsuit attempt against the Pollock-Krasner Authentication Board.

DEALER TAKES BACK DISPUTED O'KEEFFE DRAWINGS

BEGINS OWN INVESTIGATION INTO AUTHENTICITY

Temporarily resolving what is surely one of the more perplexing authenticity disputes in recent years, Gerald Peters, a dealer with galleries in New York, Sante Fe, and Dallas, has taken back from the Kemper Museum in Kansas City 28 watercolors originally thought to have been produced by Georgia O'Keeffe during her early years in Canyon, Texas (1916-18). Dubbed the Canyon Suite, the works

were recently rejected from the new O'Keeffe catalogue raisonné produced under the auspices of the National Gallery of Art in Washington and the Georgia O'Keeffe Foundation. Peters had sold 24 of the works to R. Crosby Kemper in 1993 and donated the four others to the museum. He has reimbursed the museum and, in his own words to IFAR, "honored his agreement." Technically, Peters was not obligated under the Uniform Commercial Code to take back the watercolors more than four years after the sale. Moreover, at the time of the sale, the watercolors were believed to be authentic. Indeed, the National Gallery itself praised the works at the time and wanted to purchase them.

The author of the catalogue, Barbara Buhler Lynes, an O'Keeffe scholar, is currently Curator at the O'Keeffe Museum in Sante Fe and Director of the Museum's Research Center. She joined the museum after completing the catalogue. In the course of her research, which took seven years and involved the examination of more than 2,000 objects, Ms. Lynes, working with the National Gallery's senior paper conservator, Judith Walsh, determined that O'Keeffe "consistently used certain types of paper at certain times." The paper used in the Canyon Suite watercolors did not conform to others of the same period. Moreover, some of the paper, tests showed, was not even produced at that early date.

A major examination is now underway into the authenticity and the provenance of the watercolors, which suddenly appeared in 1988. They were given to Terry Reid Caballero, granddaughter of O'Keeffe's lover, Ted Reid, by her father-in-law, Emilio Caballero, and were said to have come to him from Ted Reid. The FBI is investigating, and Peters has hired his own investigator, an attorney, Fred Smith. Peters also plans to do additional tests on the paper. When the case is solved, Peters told IFAR, if the works are determined to be forgeries, he will "donate them to an institution for educational purposes."

The O'Keeffe catalogue raisonné is a two-volume chronological study containing 2,045 objects created between 1901 and 1984 that the authors accept as works by O'Keeffe. Of these, 1,137 are works on paper. The authors examined all but 16 of the 2,045 works.

IFAR will be following this story in future issues of the *Journal.*

—S.F.

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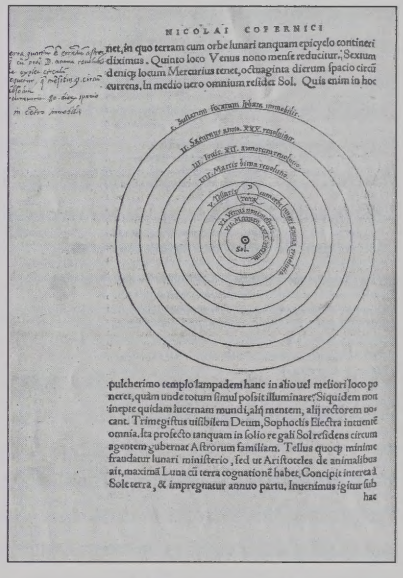
RASH OF THEFTS OF COPERNICUS' SCIENTIFIC TREATISE

When the memorable 1963 "Printing and the Mind of Man" exhibition included Copernicus' *De revolutionibus* among its list of cultural icons, it was not particularly noteworthy. Science collecting had long taken a back seat to literary first editions, and copies of the Copernicus could be had for about $10,000. In the booming Japanese economy of the late 1970s and 1980s, Japanese universities began to covet such treasures of Western culture, and for the first time copies of Copernicus' book—seven first editions—went to Japan, eventually driving the price from $65,000 to over

Since 1989, seven copies of Copernicus'...1566 edition have been stolen. After all, what could be more anonymous and easily laundered than a 16th-century book? ... Wrong!


NICOLAI COPERNICI

net, in quo terram cum orbe lunari tanquam epicyclo contineri diximus. Quinto loco Venus nono mense reducitur. Sextum denique locum Mercurius tenet, octuaginta dierum spacio circũ currens. In medio uero omnium reſidet Sol. Quis enim in hoc

pulcherimo templo lampadem hanc in alio uel meliori loco ponet, quàm unde totum simul possit illuminare? Siquidem non inepte quidam lucernam mundi, alij mentem, alij rectorem uocant. Trimegistus uisibilem Deum, Sophoclis Electra intuentẽ omnia. Ita profecto tanquam in solio regali Sol residens circum agentem gubernat Astrorum familiam. Tellus quoq; minime fraudatur lunari ministerio, sed ut Aristoteles de animalibus ait, maximã Luna cũ terra cognationẽ habet. Concipit interea à Sole terra, & impregnatur annuo partu. Inuenimus igitur sub hac

A page from Copernicus' 1543 *De revolutionibus* showing a unique distinguishing marginal annotation in a copy withdrawn from the November 1999 Christie's London auction.

$300,000. As the Japanese economy weakened, cyber fortunes in America fueled a demand for great works in science, so that last fall Christie's in London could place an estimate of $500,000-$800,000 on a relatively ordinary copy of Copernicus' *editio princeps* of 1543.

Inevitably, thieves took notice. Since 1989, seven copies of Copernicus'

treatise—five of the first, and two of the second, 1566 edition—have been stolen. After all, what could be more anonymous and easily laundered than a 16th-century book? Right?

Wrong! Sixteenth-century books are not like peas in a pod. They were sold paperback, and individual owners bound them to taste. Despite the comparatively high price of paper, there were generous margins, and scholars, pens in hand, added their unique notes as they poured over this treatise. Of course, most libraries generally don't keep track of such details, but for the past three decades I have criss-crossed Europe and America, personally examining over 260 copies of the first, plus more than 300 copies of the second edition, and taking detailed notes of their idiosyncracies.

Thus, when the Venator and Hanstein Auction in Cologne offered a first edition in 1989 with an errata leaf between folios 194 and 195, I instantly recognized that a copy with this unusual placement of the extra leaf belonged in Zittau, in East Germany. That small Iron-Curtain library didn't have the hard currency to fight the theft in an international court, but as soon as the Berlin Wall fell, the book was returned, in November 1991.

In 1997 an American dealer sent me for inspection a second edition with an erased library stamp. My ultraviolet light showed that the stamp was from Brno in the Czech Republic, but I could equally well have matched the Latin inscription against my computer data bank; the thief had struck out the word *Brunae* with a black felt-tip pen, but the rest of the inscription matched. The book came from the monastery library, an "inside job" with the thief subsequently disappearing. It took only 36 hours on the e-mail circuits to establish that the book was not being legitimately sold by the monastery. As far as I know, the book is now safely back in Brno.

Sixteenth-century books are not like peas in a pod. They were sold paperback, and individual owners bound them to taste...There were generous margins, and scholars...added their unique notes.

Dealers worldwide have now caught on that any new Copernicus books appearing on the market need to be checked against my files. The next case is particularly sad. Russian mobsters, trying to drive the Pulkovo Observatory south of St. Petersburg out of their sylvan locale, organized an arson fire of that renowned astronomical library in February of 1997. Many early books were destroyed, and the others were moved to the Russian Academy of Sciences library in the town. With the Observatory's inventory in disarray, someone removed their second-edition Copernicus, apparently supposing no one would know the difference, and in 1998 offered it for sale in Germany. My data bank allowed a quick identification, and the Munich police confiscated the book, but so far they have not allowed the book to be returned on the grounds that "the Russians have stolen too many things from us."

As reported in *IFAR Journal* (Autumn 1998), on August 12, 1998 a reader with false identity papers disappeared along with a first edition Copernicus from the University Library in Kiev, and three months later a clone theft took place in the Polish Academy of Sciences Library in Cracow. Neither book has been found. Both are distinctive, and to erase all the identifying marks would be to destroy the value of the books themselves.

At the end of last summer, librarians at the Jagiellonian Library (the University Library in Cracow and not related to the Polish Academy of Sciences Library) discovered that some particularly rare 15th– and 16th–century books had been stolen from their collections, and some were being offered in a German auction catalog. At this, the Polish press went into a feeding frenzy and, unaware that the Copernicus books were individually identifiable, publicized a conjecture that the first edition *De revolutionibus* announced for auction at Christie's had surely come from Poland. Despite my assurances that the Christie's copy was unique and from neither Cracow nor Kiev, both libraries launched unsustainable claims against the London auction house. In frustration and believing the sale had been poisoned by the false publicity, Christie's withdrew the book in favor of a later auction this season.

Subsequently, on February 4 of this year, Valery Leonov, the librarian of the Russian Academy of Sciences

Library in St. Petersburg announced that 24 valuable books had disappeared from their library vault, including two copies of the Copernicus first edition. The thieves, probably part of a Russian crime ring, apparently hope eventually to bring the copies to a major international auction house, seeking a major windfall. The power of the computer, which has helped build the fortunes driving the high prices of seminal science books, may very well also bring the thieves to justice.

Owen Gingerich
Professor, Harvard-Smithsonian Center for Astrophysics.

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GOLD PHIALE RETURNS TO ITALY

The U.S. government has returned to Italy an antique gold platter (c.400 BC), known as a phiale, that was seized by U.S. Customs in 1995 from the home of collector Michael Steinhardt. It was claimed by Italy under its antiquities protection laws. It is the conclusion to a story covered extensively by IFAR and others (see *IFAR Journal*, Spring 1998; Summer 1999; *IFARreports*, December 1997).

Of Sicilian origin, when Sicily was ruled by Greece, the platter was the center of a long legal battle which ended on January 24, when the U.S. Supreme Court rejected, without comment, Mr. Steinhardt's appeal of the 2nd U.S. Circuit Court of Appeals' decision. Mr. Steinhardt's lawyers had argued that forfeiture was an excessive punishment and violated his due process rights. They also argued that the lower court should have required proof that the phiale wouldn't have been allowed into the U.S. if the customs entry form had been filled out correctly. A New York Federal District Court in 1997 had ordered the platter seized because of false statements made on the customs form regarding the country of origin and the value of the platter. It also said that the platter belonged to Italy by means of patrimony laws vesting ownership with the government of all antiquities found in Italian soil and that it should, therefore, be considered "stolen." The appeals court upheld the District Court's decision regarding the false statements, but did not address the more controversial issue of whether the U.S. government had the right to seize the platter as "stolen property."

The platter was returned to Italy in an elaborate ceremony in Rome on February 29.

—S.F.

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1980S CON MAN, CHARLES HELLER, INDICTED FOR ART FRAUD IN SOUTH CAROLINA

ACCUSED OF SELLING FAKE WILLIAM AIKEN WALKER PAINTINGS

Late last year, a grand jury in the U.S. District Court in Columbia, South Carolina, handed down a two-count criminal indictment against Charles L. Heller for art fraud. If convicted, Heller can receive a maximum sentence of $250,000 and/or imprisonment for 5 years. As of press time, the trial is scheduled to begin April 24. The indictment charges that in 1994–95, Heller

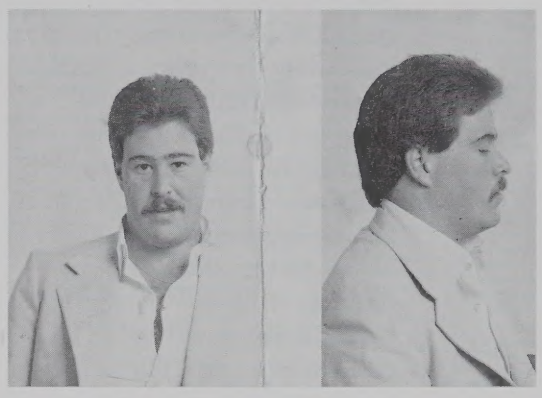

Photo of Charles L. Heller taken in 1982

devised a scheme to obtain money and property "by means of false, fraudulent, and fictitious pretenses, representations, and promises" by selling "counterfeit paintings that he represented to be genuine works of art by William Aiken Walker" (1838– 1921), a Southern American regional artist.

Heller is charged with selling one fake Walker painting, *Harvesting the Crop*, to an art dealer in South Carolina for $9,500 in cash and then negotiating the sale and shipment from New York to the same dealer of two other Walker fakes for an additional $10,000. The indictment also alleges that Heller falsely claimed that he represented the James Brucker Sr. estate of Santa Paula, California.

Heller is a familiar name to IFAR's audience (cf. *Stolen Art Alert*, Jan/Feb 1983; October 1982; March 1980). In December 1982, Heller was arrested after swindling a string of art dealers along the East Coast. He was only 29 years old but already had a prison record and a history of passing bad checks in connection with art sales. At the time of his arrest, Heller was wanted in Atlanta, New York City, Boston, and Newburgh, NY on charges of art theft and fraud. His

modus operandi in the New York City area was to use checks written against a non-existent Texas gallery to purchase paintings and decorative art. The sales—totaling $50,000—all took place on a Saturday. In each case, he convinced the dealer that he was an out-of-town dealer representing a "hot" client. This enabled him to obtain the merchandise immediately. On Monday, his victims learned too late that the Texas gallery didn't exist and that the checks were written against an account containing only $250. Earlier that year, Heller had been arrested in Atlanta. He jumped bail, but not before phoning an FBI agent to tell him not to bother to show up for the scheduled hearing. Heller worked with several accomplices and, in addition to his own name, used several aliases, including: Samuel Orenstein, James Fanning, Robert Heller, Charles Graham, Richard Berg, and Richard Hill.

—S.F.

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NEW U.S. IMPORT RESTRICTIONS ON ART

• EMERGENCY RESTRICTIONS ON KHMER STONE FROM CAMBODIA
• U.S.–EL SALVADOR AGREEMENT ON PRE-COLUMBIAN ART EXTENDED FOR 5 YEARS
• U.S. CONSIDERING REQUEST FROM BOLIVIA
• REQUEST FROM ITALY JUST RECEIVED

In response to requests from the foreign governments, the United States has recently taken steps to restrict the importation of artifacts from three countries: Cambodia, El Salvador, and Bolivia. Hearings have not yet begun on a request from the government of Italy to restrict importation to the U.S. of a broad range of objects dating from the 5th century BC to the 5th century AD. The recent U.S. restrictions follow on the heels of restrictions imposed last April on the importation of Byzantine ecclesiastical and ritual material from Cyprus.

All the restrictions are carried out under the Convention on Cultural Property Implementation Act, the enabling legislation passed by Congress in 1983 to enforce the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. The State Department is responsible for implementing the Act, and does so with the recommendation of The Cultural Property Advisory Committee, appointed by the President. Recently the Advisory Committee has come under criticism by some members of the art trade for having an anti-collecting bias, and Gerald Stiebel, from the New York gallery of Rosenberg and Stiebel, resigned from the Committee in protest. Senators Patrick Moynihan and Charles Schumer, of New York, and Senator William Roth, Chair of the Senate Finance Committee, introduced a bill (S.1696) on October 6, 1999 to amend some of the procedures for restricting the importation of objects and provide what is described in the bill as "a necessary clarification" of the Implementation Act.

Cambodia:

On December 2, 1999, the U.S. government imposed emergency import restrictions on certain Khmer stone archaeological material dating from the 6th century AD through the 16th century. This was in response to a request from the government of Cambodia for help in protecting its cultural heritage which it described as in jeopardy of pillage. At risk are stone artifacts from important monuments and sites, such as Angkor Wat and Banteay Chhmar. Khmer artifacts will no longer be permitted into the U.S. unless accompanied by a certificate from the Cambodian government.

El Salvador:

On March 8, 2000, the U.S. extended for an additional five years a bilateral agreement with El Salvador on Pre-Hispanic archaeological material. The agreement was originally enacted on March 10, 1995. The U.S. government determined that conditions in El Salvador continue to warrant the imposition of the restrictions.

Bolivia:

A request from the Republic of Bolivia to the U.S. for import restrictions of Pre-Columbian archaeological material, Pre-Columbian human remains, and Colonial period and indigenous ethnological material was received by the U.S. government in October 1999. The Presidential Advisory Committee began its review of the request in closed hearings in January and held an open session to receive comment on the Bolivian request on March 13.

For more information about the foreign requests and import restrictions, see the Federal Register. Information is also posted on the website of the Advisory Committee: http://e.state.gov/education/culprop/html.

—S.F.

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An *IFAR Evening* with Kirk Varnedoe
Art, Law, and Ethics: Theory and Practice

Editor's Note: *On October 26, Kirk Varnedoe, Chief Curator of Painting and Sculpture at the Museum of Modern Art and a member of IFAR's Art Advisory Council, spoke on a quintessentially IFAR subject: Art, Law, and Ethics. Mr. Varnedoe has been interested in this subject since his graduate school years at Stanford. Subsequently, he taught an art law course at Columbia with Franklin Feldman, Chair of IFAR's Law Advisory Council, and briefly also at NYU with John Merryman, another member of IFAR's Law Council. Mr. Varnedoe's talk contrasted theoretical issues with the more mundane challenges he confronts in the museum. Below is a transcript of his talk and a synopsis of the question and answer period that followed.*

Figure 1. Kirk Varnedoe, Chief Curator of Painting and Sculpture, MoMA. *IFAR Evening,* October 26, 1999.

Introduction

As I have the privilege of knowing a good many people in this audience, I can assure you that the most interesting part of this evening is going to be the questions. So I am going to dog trot through what I have to say so that people who are much more knowledgeable than I am in this audience can raise their hands and their voices for all of our benefits. I wanted to talk about the area of law and ethics in the visual arts in part for personal reasons.

"If you look back now at the 1960's, it seems an age of tremendous innocence...It is difficult now to imagine that an artist could easily paint a picture of a comic book character, blow it up, put it on a wall, sell it for a lot of money, and not hear from the lawyers that own the rights to that comic book character."

As Sharon [Flescher] already suggested, I was involved in the Art and Law course at Columbia with Frank Feldman and also with John Merryman briefly at NYU, but principally in the foundation of one of the very first art law courses in this country, which was taught by my former thesis advisor, the late Albert Elsen, with John Merryman at Stanford University. When I was there in the early 1970's, I was very fortunate to be a part of that course as they were forming the case book that has now become an essential tool of reference to anyone studying this field.[1] So what I want to talk about tonight is in some sense a personal story, a kind of story of formation that has a dichotomy at its heart. A dichotomy between the 1970's and the 1990's and a dichotomy between academia, where I began, and the museum world I am now in. And I want to start back with that art law course and my own beginning of interest in the field and then come up to my experience of it today.

It's interesting to look back on the early 70's when Elsen and Merryman were founding a course in Law and the Visual Arts, which they wanted to teach jointly to art history graduate students and law students at Stanford. Because one of the things in retrospect that's interesting is how little there really was to teach. Art law was an academic field that was cobbled together out of bits and pieces, as law about art itself was, and if you look back now at the 1960's, it seems an age of tremendous innocence in this regard. I think it is difficult now to imagine that an artist could easily paint a picture of a comic book character, blow it up, put it on a wall, sell it for a lot of money, and not hear from the lawyers that own the rights to that comic book character. And yet that happened with Warhol again and again, and again with Lichtenstein and many other Pop artists. It was a much less litigious age with regard to art in all of its facets, but that was changing very fast. And I think that the emergence of art law as a field in the early 70's, and the emergence of that particular course I was lucky enough to be a part of, was what you call an "over-

[1] John Henry Merryman and Albert E. Elsen, *Law, Ethics and the Visual Arts,* 3rd ed. Kluwer Law International, 1998.

determined" event, in terms of the things that brought it into being in an age one might describe as part Tet and part Tut. That is, it was the era of the Vietnam War, which I think had something essential to do with the ferment in society; it was also the birth of the blockbuster exhibition.

How do these things fit together at least in concatenation? Well, first of all, I'd look at the figure of Elsen himself, who was my entreé to art law, as someone bearing the heritage of Meyer Schapiro, who had studied at Columbia with Schapiro, and had inherited from Schapiro a strong sense that modern art had a connection with social justice and that there was a necessary connection between the study of modern creativity and the involvement in the fight for social justice, particularly from the left, which is where Schapiro came from. And I look at Al's Art Law course as in some sense his carrying that in a different direction. The way Al was teaching art and the law has something in a general sense to do with the shift from the old left out of which Shapiro emerged, an old left based on the labor unions, based on the infrastructure of the economy, and dealing outward from there in some Trotskyite fashion up towards culture. Whereas in fact Elsen seems to me to have started with the idea of cultural issues as a prime concern, much more in the fashion of the left and the student left of his day, although he came, I think, to fall out of sympathy with it. The cultural politics were a beginning and ground level issue for Al and something he was strongly interested in teaching to his students, not simply that concatenation of great masters who had produced the art that he admired. He was grounded in Schapiro and tried to translate that into a new age, and this course was one of the ways he did it.

Emergence of Art Law in the 1970's

But I think also that the art law field came into being, and that this course was formed, at a moment when there was a very different kind of artist emerging. An artist who was no longer content to be a drop-out bohemian, who was not happy simply breaking up stools in the Cedar Bar, but who was far more savvy, often college educated, politically engaged, an activist in a very specific way, and worldly and in tune to the way the world worked. One of the crucial things I remember looking at in that art law course was the film of Rauschenberg at the Scull auction saying to Bob Scull: "you made a lot of money off of me." And the idea of the artist no longer being interested just in what he was producing, but in its afterlife and its life in society. And how the artist could be engaged in that afterlife was symptomatic, it seems to me, of a different kind of artist in the late 60's and early 70's. These different kinds of artists produced a different kind of art. They produced that kind of art that wanted to get out of the gallery system, wanted to get out of being an ownable commodity and get into life.

The idea that Rauschenberg had espoused of working in the "gap between art and life" had been extended by artists in the late 60's and 70's into works that spanned vast expanses in the desert, that worked with the ecosystems and information systems, that involved performances in public spaces, that involved interventions in desert ecologies—things that worked in the fabric of life itself. And this brought art into a very different engagement with the legal system that governed life in this country. On the other hand, that flight from the market came at a time when the market itself heated up tremendously, and the sheer financial value of art increased to such a degree, I think, in the late 60's and early 70's, that much more was at stake in its ownership and its transactions, in its exchange back and forth. Society called for a new body of law to speak to the particular issues that had to do with transacting lithographs as opposed to transacting other widgets, shall we say.

"The sheer financial value of art increased to such a degree in the late 60's and early 70's, that much more was at stake in its ownership and its transactions."

Finally, this was the era of Tut; it was the era of the great Chinese show, in the 70's at the National Gallery, the era when vast exhibitions of cultural treasures came to play an extremely important part in political symbolism, in which the movement of national treasures for the purpose of display and prestige came to be a high-money, high-profile issue of great interest to cultures around the world. I remember Peter Schjeldahl's wonderful phrase going to an art fair at some point in the 80's when this had become an established practice, and he said "it is so touching to see the little choo-choo train of culture trying to pull the huge baggage of politics along with it." That's in fact what began to happen, I think, in the 70's.

For all these reasons, I think, there was a pressure for the development of the study of the interrelationship of art with the legal system, with the system that governed society. My experience of that course, which was a beginning attempt to put together a study of that field, taught me a couple of things. One of them was the very fundamentally interesting thing, I think, about American law in this

regard, that when you try to cobble together the laws that govern the exchange of lithographs or the holdings and property-owning of paintings, essentially American law was built out of *property*. Whereas European law, we learned fast, was built out of the idea of *personality*; you could own property in Europe without owning the personality invested in it. You had no right over the part of the artist invested in the painting— whereas in the United States, the concept of ownership and private property was

"How many lives is a mural worth? Who will sacrifice for this? . . .What sacrifices are too much? Who decides? Whose art is it?"

fundamental, so that plumbing fixtures and paintings tended to be treated the same way, and the laws governing paintings had been cobbled together upward from plumbing fixtures rather than downward from the idea of a unique creative spirit.

The wonderful thing about that experience in the 70's is that abstract considerations that govern the study of art history or that govern the study of why art was important were given teeth, so that broad questions like "who owns culture," "what does it mean to own culture," and "what are the responsibilities that come with that ownership" could be tracked down not only to historical chestnuts like "should the Elgin Marbles be returned," which we argued a lot, but to much more immediately particular cases, such as the one in which an Indian doll was reclaimed by the tribe that claimed ownership of it, from a museum, with the argument that since all tribal property was communal, the doll could never have been sold legally, and must have been stolen. And the tribe wanted it back. This has happened many times since, but the particularly gripping issue in this case, which we teethed on, was that they wanted it back so they could do what was properly supposed to be done with it, which was to leave it out in the rain to rot. It had been part of a burial ceremony and was intended to decompose, and this thing that had been preserved in the glass vitrines of this museum carefully as part of the nation's cultural heritage for so long, as part of what could be instructive about a link to our past, was now supposed to be returned to someone who wanted to destroy it. What were the responsibilities of ownership in this regard?

Who owns culture? To whom does it speak and what lessons can it give? These things came down with gripping immediacy in these specific cases. Another one was, you know, the standard question: "If the museum is burning do you save the Vermeer or the janitor if you have to get out in a hurry?" And someone in the Art and Law course said: "That's really a testy question; why isn't the Director on the floor, or one of the trustees, which would then make the question really telling?" But this question, which is a very broad and general issue, took on a very different taint when you began to think about the dilemma of the army commander at the gap in Monte Cassino during the battle for Italy in the Second World War, when a major abbey full of extremely important paintings and extremely valuable and historical artifacts was being used by the Germans as a site from which the path was being pinned down by shell fire. And the decision had to be made whether to bomb and shell this abbey and certainly destroy its heritage, or whether to send men to slowly crawl up the hill in an attempt to seize the building. How many lives is a mural worth? Who will sacrifice for this? What sacrifices are necessary; what sacrifices are too much? Who decides? Whose art is it? Is it the Italians' and the enemy's, or is it yours, because you are a part of the fundamental heritage of mankind? These were the kind of things that for a young art history student in the 70's made the history of art and the issues of creativity and the value of art come home with an extreme vividness, because they came down to concrete, real decisions.

Realities of an Art Museum

And yet now when I look back on that course, I think how little in a certain sense that prepared me for the lived experience of dealing with such issues as I do now day to day in the Museum. Because the issues that you confront when you are working on the front line or in the trenches of a major institution today have often far less drama than the burning building, than the pass under shell fire. They are instead a thousand tiny little incremental decisions about what you will or won't do—where lines are drawn, weird things that have to do with the interplay of unexpected contingencies, idiosyncratic personalities, and particular traditions that belong to the institution. And it is the sum of these thousand pressures on you to move one way or the other which collectively over time determine the emergent character of the cultural institution under the pressure of the forces around it.

MoMA has a particularly dual character, I think, that makes it interesting and has made it interesting for me to share its life these past 10 years in dealing with law, ethics, and the visual arts. It is both the repository of a great tradition and wants at the same time to be at the seat of innovation and to be involved with contemporary art and

with experiment. And it must always juggle these two things together. Gertrude Stein told Alfred Barr: "You can't be a museum and be modern," and we've been trying to disprove her ever since. We want to do both things, and both things require you to constantly make decisions about how you will define yourself in the changing world.

Integrity of Art Images: Copyright

I just pick one issue for the side of our role as a repository or a protector. One of the fundamental things we think we are supposed to do as a museum is to protect the integrity of the image of art. In the age of mechanical reproduction, a work of art will appear in many forms in many places. We feel that it's part of what we should do as an institution to govern the life of reproduction of the works of art in our care. So that we want to ascertain, for example, that Picasso's *Demoiselles d'Avignon* will not appear with big red type dropped over the characters, or that it will not be reproduced in blue uniformly, or will not be produced with stripes over it, or cut in half. And we feel that is, in part, what we were given to do in protecting the heritage of the past. So we set standards that we will not let a picture be reproduced in detail unless somewhere in the publication it is reproduced in its entirety. That we will not let type be dropped over the picture; we will not let tinting or color go in.

What are we to do in the current world where the copyright ownership of this picture and many of the other pictures that we own has passed out of our hands into the hands, for example, of the Picasso descendants? We are now faced with their request for the use of the *Demoiselles d'Avignon* to advertise the Picasso model Citroen. The picture is to appear behind a Citroen automobile licensed by the Picasso family. Here comes a true crunch between the tradition of what you thought you were supposed to be doing and your devotion, after all, to the heirs of the artist, who are supposed to be the ones most concerned with it. Then there is the quite real political reality of the fact that you deeply need the loyalty of those heirs in order to do the next Picasso show that you want to do. And it is their wish that this advertisement happen. And so the Citroen company calls you and asks for a transparency of the *Demoiselles d'Avignon*, and you sit with the list, the letter on your desk, and you say: "What do I do?" And one of the reasons that it is a difficult decision is that you know they will get the *Demoiselles d'Avignon* out of a book if you don't give it to them. You can't stop them. That they will find a bum slide of it somewhere and do, willy nilly, a bad job of reproducing it. Is it in our interest to have a "good" *Demoiselles d'Avignon* as opposed to a "bad" one behind the Citroen automobile? And, if so, why? And, if so, what is our interest in it in the crudest financial sense? Because somebody is making a lot of money off that issue,

Figure 2. Vincent van Gogh, *The Starry Night*, 1889. Oil on canvas. 29 x 36¼" (73.7 x 92.1 cm). The Museum of Modern Art, New York. Acquired through Lillie P. Bliss Bequest. Photograph ©2000 The Museum of Modern Art, New York.

and why then isn't it us? And if it's going to be us, are we just turning into whores, and, therefore, selling our seed corn, everything we protected for all these years, simply for gain? Take the related dilemma of our retail store. I, like my predecessors in the museum, have an abhorrent horror of great paintings reproduced on tschotchkes. I just think it's a terrible degradation of the *Starry Night*, (Fig. 2) for example, to put it on an umbrella. Perhaps a Magritte looks great on an umbrella, but the *Starry Night* is a nearly mystical, quasi-religious picture that I think is cheapened irredeemably by being put on an umbrella, and yet the store down the street can sell the *Starry Night* umbrella because we can't control the copyright. So am I starving the museum by taking the dollars out of the coffer that will go into somebody else's coffer for our picture to be reproduced on the umbrella? Should we continue, or should we go ahead and sell the *Starry Night* umbrella? Out of a thousand little decisions like this, both what you will do and what you will not do, comes whatever you call your ethic about your ownership of a cultural heritage. That's one example in a certain sense from the past about the life of copyright, the life of involvement with reproduction.

Challenges of Contemporary Art

In the present, on the other hand, in the engagement of the art that engages life or moves into life that I described earlier, you would be amazed at how mundane these high

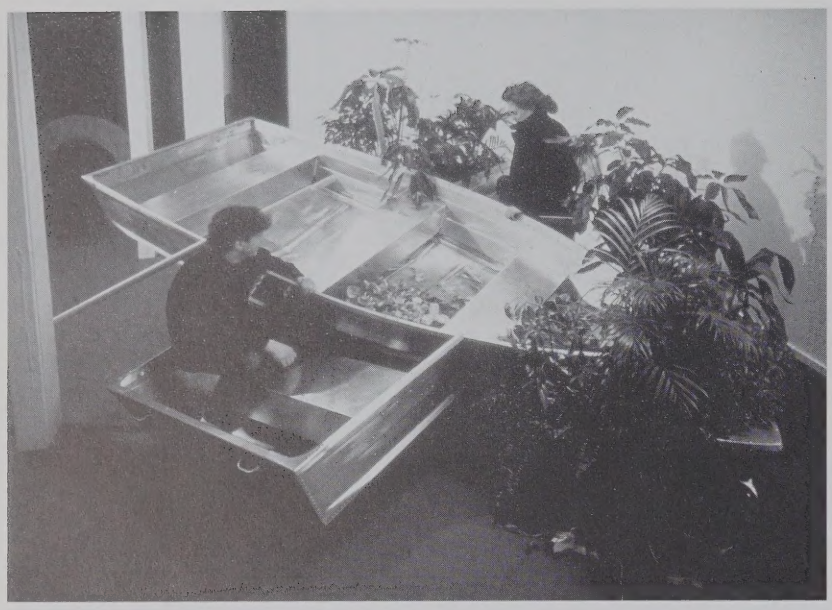


Figure 3. Vito Acconci, *Landing*, 1987. Aluminum rowboats, plants, water, fish. 4½ ' x 12' x 12'.

blown issues come down to be. Two key examples would be: "Who feeds the fish?" and "Who pours the milk?" I'll describe to you what I mean. We had a Vito Acconci show, and Acconci had a piece that had live goldfish in it (Fig. 3). The question is "If the fish have to be fed on the weekend, do art handlers have to do it or can Visitor Services do it?" Because, if it's art then only art handlers can do it, by union agreement, and you have to pay them a full day's work to come in and feed the fish. While the Visitor Services people, who are there all day, are not licensed to feed the fish

" . . .In the engagement of art that. . .moves into life. . .you would be amazed at how mundane these high blown issues come down to be. Two key examples would be: Who feeds the fish? And who pours the milk?"

because they are not art handlers. Similarly, we own a Wolfgang Laib milk stone (Fig. 4), which is a piece of marble on which you pour milk, a beautiful skin of milk. It's an absolutely gorgeous thing because surface tension produces a beautiful curve at the top, the white of the milk and the white of the marble work together. It's an object of dream and contemplation. But milk, as you may know, goes sour. And if you leave the piece over the weekend, do you have to have an art handler pour the milk? Or can you have Visitor Services pour the milk to refresh it as it evaporates? For lack of resolution of this issue, our entire lobby smelled to high heaven at some point because we could not figure out in which category this work of art existed.

So the whole question of "is it art?"—a very big philosophical question, a question of intense debate—comes down to the most mundane thing about who can nourish it, who can handle it. We think of the idea of art leaping out into life, and the excitement of it. Here's this confined box art has been in, now it's going to leap out into the great big free world of new possibility. But think of the other possibility. In that box is immense freedom. In that box lies incredible liberty or fantasy, amazing possibilities to do the impossible. Out there, lies life which is insanely structured, governed by norms, governed by conventions, governed by categories, governed by laws, and the artist who wants to move out into the field of life no longer has the protection for his fantasies or for his prerogatives that he has within the box. And the agonizing trade-off is how much will the artist lose by forcing himself into the strict conventions of categories that begin with the most mundane level of which union the person that handles the piece is in.

Museum Liability

Another issue is liability. If you're going to be involved in life, you're going to be involved in the necessity of respecting life and health. This came down to us in a clear instance where we never expected it to happen, with our Carl André sculpture. We own a Carl André sculpture that's

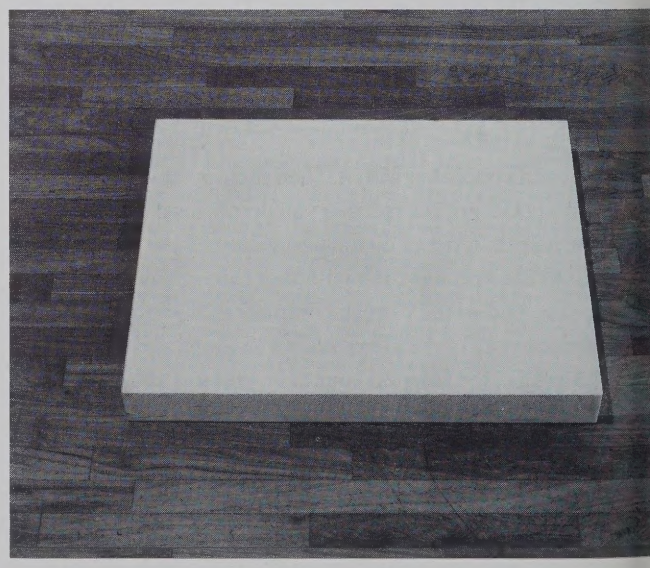


Figure 4. Wolfgang Laib, *Milk Stone*, 1978. Carrara marble and milk. 2¼" x 22" x 17¾" (5.7 x 56.0 x 45.0 cm). The Museum of Modern Art, New York. Gift of Agnes Gund. Photograph © 2000 The Museum of Modern Art, New York.

144 squares of lead that forms a square on the floor. (Fig. 5) A couple of weeks ago, we got a call from the health department, which said that a mother had called about her child. She'd been at the museum and was worried that people were allowed to touch the Carl André, because it's made out of lead. So, arrives the health inspector with a swab; he goes up to the Carl André, swabs the Carl André, and says "This is several times the legal level of lead." Now, are people going to get down and lick the Carl André? Or, furthermore, are they going to walk on it and go home and lick their shoes? And yet, still the health department calls us and says "you must put up a sign that says you cannot walk on that sculpture and your guard must enforce it." But the whole point of a Carl André was that you should be able to walk on it. Part of the sculpture is the defeat of the pedestal, the defeat of the barrier between the artist, between the work of art and the room around it. Without the ability to walk on it, it is no longer a Carl André sculpture. All of the energy, all the aggression, all of the intervention of the Carl André is based on the principle of being able to walk on it.

We're faced with this dilemma on Friday at 5:00 p.m. The health department says you are either going to pay $2,000 a day, or you are going to take that sculpture off the floor now and put it away—and by the way, have your preparators wear good solid gloves to get if off. Or you're going to put up a sign saying "You can't walk." What are your options here? Do you censor the art or do you take it away? Do you decide to, in essence, castrate the art by putting it there inert and not letting anybody walk on it? Or do you threaten the public health? And are you a good judge of what the threat to the health is? How do you compromise? This issue remains totally unsolved, because the installation closed two or three days after the issue was raised, and I honestly don't know what we're going to do next time we put the Carl André on the floor.

But to go from live fish to dead fish, to end the list, we had a young Korean artist, who loved to work in dead fish. And she decided to move out from her normal dead fish, which were dried and in a bag, to a dead fish which was unbagged and on a refrigeration unit. It wasn't supposed to smell. It smelled. Terribly. Who's the judge of how much stench is too much stench? How many visitors are turned away? The fact that the exhibition was held on the route to the cafeteria—should this be a determining aspect in whether we leave the work up? The artist is saying "Censorship. You know this is my art form. You asked me to do a show. This is my art form." You're sitting there, your audience is gagging, there's a health issue about the microbes in the air. Do you compromise by bringing the show out into the garden because it will be dissipated out there? Or do you take it off

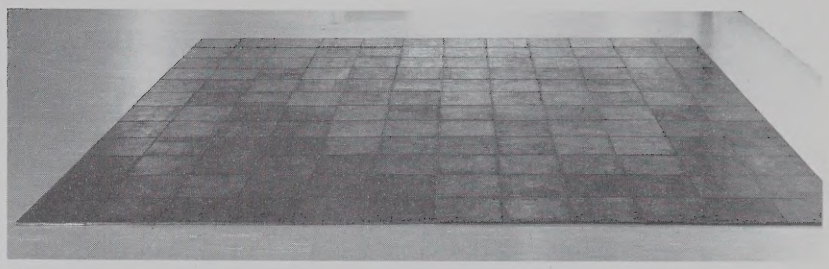


Figure 5. Carl André, *144 Lead Square*, 1969. 144 lead plates, each approx. ⅜" x 12' ⅛" x 12' 1½" (.9 x 367.8 x 369.2 cm). The Museum of Modern Art, New York. Advisory Committee Fund. Photograph ©2000 The Museum of Modern Art, New York.

view? In the long run, we took it off view and opened ourselves to arguments about censorship.

Again, a thousand times in a thousand particular instances, abstract categories and big visions of what the truth is about, being abstractly for or against censorship, don't do you any good. You have to take the pressure on the ground. It's a lot less than about choosing whether you're going to shell the abbey or not, but cumulatively it adds up to a lot. It adds up to a lot about the character of your institution.

"Restitution. . .has most often to do with the question of art illegally and immorally looted by the Nazis. . .There could not seem to be any more clear-cut issue on which to make a decision. It seems. . .to exceed mere legalisms. And that is one of the things I have found most dangerous about the current debate. It is the sudden disaffection with the processes of law. . ."

Art Restitution

Finally, I think I want to turn to one issue which I'm sure is on all you minds if you're interested in law and the museum world today. And that's the issue of restitution—the issue of both living in the present and making up for the errors of the past. Restitution, as it has been posed now, has most often to do with the question of art illegally and immorally looted by the Nazis during their occupation of European countries. There could not seem to be any more clear-cut issue on which to make a decision. It seems so clear-cut morally and ethically as to exceed mere legalisms. And that, I must say, is one of the things I have found most dangerous about the current debate. It is the sudden disaf-

fection with the processes of law and the feeling that the moral claim of this issue itself is so imperative as to demand swifter justice and faster motion than can be provided for by the legal mechanisms at our disposal. These mechanisms are cumbersome, they are slow, they are tiresome, they're uncertain, and therefore they are inadequate for this task. But down that path lies significant danger, it seems to me. I'll come back to that in a moment.

I think that the problems of restitution are in some initial sense simply mechanical; and that is one of the things we found out, those of us who studied art history, and for years depended on these nice thumping big catalogues raisonnés; once you put an iota of pressure on these big impressive lists of owners who used to have these pictures, they crumble like dust and look like Swiss cheese, to mix metaphors. There are huge holes unaccounted for. Anytime you must prove something against its accusation, you suddenly find out that provenance and the issue of provenance in catalogues raisonnés is a can of worms, an enormous can of worms that will require ages of proof to try to remove the shade of ambiguity that inevitably haunts it. And what that calls for is a generation of researchers which, in fact, currently doesn't exist. We have over the past generations of art historians tended to work so far in the direction of theory, so far against the particularities of the histories of particular objects, that the well-trained researcher in provenance now becomes a kind of rare and valued commodity—someone who knows how to interpret the raw data of a catalogue

"Anytime you must prove something against its accusation, you suddenly find out that provenance...in catalogues raisonnés is a can of worms..."

raisonné and go beyond it into the archives and find the thing, like a bloodhound, through an instinct. This is a skill that has gone predominantly untrained in some of our major schools of art history over the last years, and that is putting us in a bad position at the moment.

But more troubling perhaps than these mechanical problems, for me certainly, is the dislocation in these issues between the moral and the legal. I said at the outset that what seemed compelling about this is that the moral is so obviously clear. You want to do the right thing, legality be damned in a certain sense. And yet there are shades of gray constantly in this landscape. One of the examples that struck me is that we own a wonderful van Dongen, a Fauve painting of a cross-dresser, a cabaret singer named *Majesco.* This picture belonged to the family of the current head of the French national museum system, Françoise Cachin. And Françoise Cachin's mother, hard up for cash during the occupation, sold the *Majesco,* which had come down through her family, at auction at the Hôtel Drouot. And now it's in The Museum of Modern Art. The distinction is that when it was sold, during the occupation, it was sold to a Frenchman, not to a German. If it had been sold to a German, Françoise could have the sale voided under French law and claim the picture back from us. So we're perfectly legally ok. We don't owe Françoise Cachin or the family anything; it was sold to a Frenchman. But can you stop there? Would it make a difference to you if you knew the Frenchman was in fact a rank collaborator with the Gestapo? That he had been responsible for sending members of Françoise's family to the concentration camp? Would it make a difference to you if Françoise Cachin wasn't Françoise Cachin, and was indigent, not the head of the French museum system, but incredibly suffering and poor and desperately in need of an operation that only having this picture could pay for? Where is the adjudication between your moral responsibility or ethical responsibility and the legalisms of the issue?

Our director, Glenn Lowry, convened a large symposium, in fact, precisely on the issue of restitution and brought to it, among other things, professors of ethics, people who think about ethical issues, in terms of resolving the inevitable frictions and problems between the need of wronged individuals and the needs of society. And the ethics professor spoke rather eloquently about what law provides for in terms of society's needs. He spoke of relief and repose. That society needs relief from injustice but ultimately society needs repose too, and the law is supposed to provide that. What he meant specifically is the statute of limitations law. There's a classic case now of a picture that was taken from a museum in Hungary and has wound up in a museum in Canada. The picture has been published widely, known in many circles, not at all concealed. There's been ample opportunity. The statute of limitations has now run out. But as with many cases, the fall of the Iron Curtain has emboldened people to come forward, and the pictures are being claimed. The museum that owns the picture is being chastised loudly and hard for hiding behind the mere legalism of the statue of limitations. And the ethics professor argued that one should not so easily dismiss what the statute of limitations is there to provide society, which is a repose that it badly needs, a closure, a finish, in order to get on. It is never easy to accept but it is a need of society. Just as, on the other hand, society, on the counterweight to repose, needs a kind of dynamism, needs a kind of fluidity.

And that is the point, or so I take it to be the point, of the New York State law that protected against seizure of property on loan to cultural exhibitions, which has recently been in dispute. Society values being able to have such a thing as a loan exhibition. To that end it protects that loan exhibition because it feels that the museum and the exhibition is not the place in which to pursue an issue of law

"These are controversial and extremely difficult to resolve issues. But they do have always, at their core, dilemmas between personal rights and societal needs..."

against a picture in that show. These are controversial and extremely difficult to resolve issues. But they do have always, at their core, dilemmas between personal rights and societal needs and between the immediate strong vivid appeal of particularity and large generalizations about our culture's importance, about its ultimate ownership, about what we ultimately need from it.

Pressures of a Free Press

I would close, I think, with a final sort of nasty truth. And that is, that for all of the strong dilemmas that I've described, for all that one tries, as one is given to try the best one can, to deal with the countervailing forces of ethics, morality, legality, that in the long run, one of the fundamental truths of what's happened between 1970 and 1990 is that these issues are so often decided on none of those bases, but on the basis of the press—and on the basis of the vulnerability of public institutions to the pressures of a free press, which is something we all value. I will share an instance with you. We had a picture that had been donated by promise to us. We showed it as donated to us; we insured it is donated to us; we held it for many years; we did an honorific label in honor that it was donated to us. Come the day when the person who had left it to us died, it turned out they changed their will shortly before their death and left the picture to a 6-year-old niece. And so the picture which had been ours for ages, and which we had duly taken care of, and which we depended on having, suddenly was to be snatched from our hands by the lawyers. And our lawyers said we had good ground to defend this; legally and for every other reason, we should try to fight this case. But the big picture of the huge institution waxing its black mustache and the poor little 6-year-old who wanted the picture, was simply too much for the museum to face. When the press got a hold of it, it was impossible to refute the pressures that were brought to bear by the image of the issue. And in the long run, it was never taken to court. It was not decided on moral issues, it was decided on the protection of the integrity of the image of the institution as an intangible asset or property. One is not only protecting the integrity of the *Demoiselles d'Avignon*, one is not only protecting the integrity of what might have text dropped on it or have its details cut from it, but instead one is protecting also an institution built up on a set of traditions involving those cumulative thousands of little "I will do this; I won't do that," that add up since 1929 to constitute The Museum of Modern Art today. This is often in itself another value to society, another value to the people that work in it, that has to be weighed in this ongoing shifting dynamic between our ethical obligations and moral obligations and our legal obligations towards culture as we are given to protect it. Thank you.

(continued next page)

An *IFAR Evening* with Kirk Varnedoe: Q & A

AUTHENTICATION

Q: Since you are an expert on Rodin drawings and worked on an exhibition of Rodin forgeries, I'd like to raise the question about art, law, and ethics in regard to the sensitive issue of art authentication and a scholar's responsibility. How does one deal with the issue?

A: Well, this is a case where matters of hard financial reality and people's lives depend on profoundly subjective judgment. When I studied, I watched Al Elsen take a stash of drawings that had been sent to him by Sotheby's, and he just began turning them over one after the other saying "No." I said "How can you do this? You're not even looking at these things. How can you presume to think? It's crazy. Slow down." And so he said "Well, you want to understand the problem. Go study it." So he got me a grant and sent me to Paris, and four years later I have a Ph.D. in the subject. And now I swear that through a dense fog across the room, I can tell you whether the drawing is right or wrong. And I'm utterly—the arrogance—I'm convinced I'm right. I've dealt with it so long that if it's one of the four major forgers, I can probably tell that across the room too. If it's a good fake by somebody who hasn't done it before, then I may get fooled, but if it's anyone of the four forgers who weren't very good at what they did, it screams, it screams at you. And yet, I would have the same problem if a student stood in front of me and watched... I do one authentication, and I open the envelope and the drawing starts to appear and "nope"—the top third of it has come out and "oh I know what that is." I went to houses of people and they said "We got these pictures from my grandmother, and they're going to send my kids to school." "Well they're forgeries; they're not worth the paper they're on." I'm pulling these kids out of school, and how am I going to defend it? In my early days, I had a paper caliper. I used to measure paper thickness, and I drew and traced water marks, and I tried to build up all the empirical evidence I could. And there *is* some empirical evidence. Thank God there are also 8,000 authentic drawings in the Musée Rodin, so you have a certain corpus to work with. But even that turned out to be not reliable, because they had been given drawings over the years.

> "Art is not democratic. The jury doesn't understand why somebody [must] tell them whether it's art. . ."

IFAR Board member, Leon Levy, posing a question, with Shelby White at his side. *IFAR Evening*, October 26, 1999.

It's relatively petty in this case because Rodin drawings are not worth that much. If it were Picasso drawings or Michelangelo drawings, and I tried to tell you "That's nice that you thought you were going to support your family for two generations, but my belly tells me it's worthless," well, that's an extremely difficult issue to defend. And yet, I'm utterly convinced that it's the only way in the long run to do it. You just have to study and study the issue, and one thing that I rebel against is the French system of the so-called "expert." They have stamps that say Joe Doe, "expert." And you bring it in—Rembrandt, Dürer, Raphael, Renoir—and bam, he'll give you some expertise because he's an "expert." I just don't believe in this. I believe you can develop an expertise at great costs in a fairly limited area of work. It might be Italian Paintings of the Renaissance, it might be in only one person. But from the small experience I had with this tiny little corner, I think there's no such thing as transferable expertise. There is no such thing as general connoisseurship in this area; there's only specific knowledge, and the knowledge has a lot to do with study. But unfortunately it is one of those areas that I believe is ultimately and profoundly subjective. There are many things that could satisfy every empirical test which are nonetheless wrong and the only way to refute it is, you've got to turn to someone and say "You got to believe me." And there's no recourse to it.

One of the reasons art and the law had a fundamental set of problems or ambiguities in interacting is that, in fact, art's not democratic. The jury does not understand why they should call somebody in to tell them whether it's art in a pornography case. Everybody understands that there's a difference, that there are things that really require expertise, like "will this rocker arm break at 1500°F?" That's a question that the army wants to know when it commissions tanks. But if you've got a court of law and the question is "Is this art?" do they need an expert? Can it be acceptable that both of you see the same thing, and one of you sees something the other one doesn't see? There's a great rebellion against that, and that transfers into forgeries as well. It's the mystification implicit in the idea that I'm seeing something you're not seeing. Yet it's the same object sitting there.

Q: As a Rodin scholar, do you feel obligated if you see a fake work circulating to say anything about it, or do you do it only if you're specifically asked?

A: I've learned to protect myself legally in this regard and to protect the museum. Because I feel an obligation to the market, because no other person was ever foolish enough to go down this path and spend the years doing it, I think I'm the only person that regularly has Rodin drawings at issue, and so if I don't do it, it won't happen. Or it will happen, I think, less well. So for the major auction houses and for dealers I do regular expertise. I would say, by the way, that I see one authentic drawing in every twenty probably, that's the nature of the issue. But I require everyone to sign a release before I will give an opinion, that says a) they asked me for the opinion and b) they hold me blameless and c) they hold the museum utterly blameless. Because the museum has a strong interest in not having its curators pronounce on works in trade, that the issues of conflict of interests are terrible. And so I do this only because I feel I must do it. It's a duty to Al Elsen, to the people who gave me this education, but I have to protect myself and the institution I work for.

Q: The advance statement holding you blameless will not protect you if, in fact, somebody decides to sue you, and if your method is still that of Al Elsen, where you just flip through the drawings. You're not going to be able to show afterward that you exercised due diligence, that you were really careful and, it seems to me, you could be liable.

A: And I'm not sure what argument I would make. I can go through the motion of looking at the drawing for 2½ minutes instead of a half a minute. I won't learn anything more much from doing it, but if the people want the feeling that that's a longer study, but how to protect myself, other than to just withdraw from doing it, I don't know.

Q: If you will only give an opinion if you're asked to give an opinion, suppose you were flipping through the latest auction catalogue, and you see something that looks wrong to you?

A: I will correct it, since I regularly give opinions to Sotheby's and Christie's, and my implicit understanding with them is that they're going to consult me before they put it in the auction catalogue, which they generally do. I've had instances where branches of one or the other auction houses will, in fact, send me a catalogue that has a bum drawing in it, and then I volunteer it to the auction houses and say: "We've had a longstanding relationship, and you should have showed this to me before you put it in the catalogue."...It's perfectly possible I could get in trouble. I think one of the reasons that I don't is that I'm playing in a relatively low stakes game. If it were Picasso I was dealing with or Leonardo da Vinci, I might have more pressure than I do.

> "And now I swear that through a dense fog across the room, I can tell you whether the drawing is right or wrong....If it's one of the four major forgers, I can probably tell that, too."

Sharon Flescher interjects:
IFAR has never been sued in its 30 years of art authentication. I am very proud and pleased to say.

Q: Kirk, as you know, we set up an authentication board years ago for the Pollock and Krasner inventory. We won a couple of outrageous lawsuits where agreements had been signed, as a previous speaker mentioned, and we disbanded the authentication board. Now if someone has a Pollock or Krasner, we send them happily to IFAR. I'd be

curious to have you comment on this. It was not just the legacy of Jackson Pollock or Lee Krasner that we wanted to protect—and we spent a fortune on what I am about to say—it was our moral and ethical commitment that art historians and curators should have the right to practice their scholarship with some freedom, some judgment, and some integrity. But it is absolutely appalling. I mean we had been threatened with a lawsuit by someone with a Pollock, where Pollock is misspelled and bears no more relevance to a Pollock than Sharon's nice bookcase. I'd be curious to know what your thoughts are about this dilemma because it's an ongoing one, and we certainly know about it.

"...in Darwinian fashion I believe that some of the richest and most complex things in nature and in society happen by a series of very small increments. Little decisions about what you will and will not do ...and they cumulatively add up to an institution that's sold its soul and one that hasn't..."

A: The question, I guess, is the issue of the vulnerability of scholars or art historians to litigation unless they have a guardian angel like the Pollock-Krasner Foundation to stand behind them or a shield in front of them. I guess I said earlier that I'm not sure shields work anymore, just as letters of recommendations are eventually public too. I think no matter how thick the organization, if somebody's determined, they'll come back eventually and will be able to pin down the person. I guess, to play devil's advocate: Would you want a society in which judgment could not be questioned legally? Would you want a society where there was no recourse against unjust judgments? Or would you want a society where there was some mechanism by which a person who made a judgment would have to stand by it or have to have their credentials and abilities tested by the system in order to justify it? I don't think you'd want it the other way around either. Perhaps an unhappy answer.

Sharon Flescher responds:
When IFAR was set up in 1969, the same problems existed....People tried unsuccessfully to pass a New York State law freeing scholars to give opinions without the fear of lawsuits. In despair, IFAR was set up. The reality is that the fear of lawsuits stifles scholarly opinion. It's not so much that the scholars would lose the suits. That's unlikely. Indeed, in the Pollock- Krasner situation, there have been three lawsuits, two in the past and one, to my understanding, is still underway. The first two were dismissed. But the problem is that everyone gets so afraid to speak out, you end up with a situation where the truth just isn't said.

CULTURAL PROPERTY ISSUES

Q: You raised some fascinating questions from an original and interesting perspective, but you've given us really no basis for making the judgments as to what should be done. In other words, what should be the standards of society regarding a work of art? If the Italian government claims under a law of 1939, when Mussolini was the leader, that an object was illegally exported from Italy, and the U.S. government via the Treasury Department sends people into someone's home to seize that object, that is either legal or not legal.

A: But you've answered the question. Either it's legal or it's not legal. We have a legal system, and it's very imperfect. Many of our systems are imperfect, and we try to improve them all the time, but if we decide to abandon them because they're imperfect, we're going to be in a deep amount of trouble on many fronts.

Q: But because most people don't care to get the publicity or to spend the amount of money to take these cases all the way up if necessary to the Supreme Court, the cases are settled more by public custom than they are by careful litigation....

A: If the question you're asking is whether I have an objective standard by which such cases in the abstract should be decided, I would certainly never presume to offer that. I think what I was trying to argue for, in fact, was the agonizing particularities of each case and the dilemma of dislocation between moral imperatives and legal imperatives in many of the cases. I don't have an answer for that but, what I'm saying, I guess, is that in Darwinian fashion I believe that some of the richest and most complex things in nature and in society happen by a

series of very small increments. Little decisions about what you will and will not do. They go one way or another, and they cumulatively add up to an institution that's sold its soul and one that hasn't; between someone that's corrupt and someone who isn't. I'm not sure that there's a litmus test on any particular issue that's a cumulative set of things over time. People make errors and then they correct them and go back. I don't think there is a rule; you can't go down to the basement and open up the safe and pull out the book and say "Oh here on page 34 it says I should do this." Unfortunately it just isn't that way; that's been my experience. That's why I was trying to compare the difference between the academic debate in the seminar room over the issue and the greater complexity of trying to decide it on the ground at 5:00 pm on Friday afternoon. I realize it's unsatisfying.

Q: To what extent do you, or don't you feel that a museum has a responsibility to look for and return works of art in its own collection that may have been looted by the Nazis, and are there any differences in responsibilities regarding works that you might want to borrow for exhibition that may have clouded pasts?

A: I certainly agree that it's a responsibility, and I think the American Association of Museum Directors has put out a policy statement on this—that it's certainly the responsibility of the museum to know what it has. One of the particulars is that a museum tends to look more closely at things it buys than things it was given over the years. We don't look gift horses in the mouth, we don't inspect those teeth quite as closely as you do those that you're buying, and, therefore, things slip into the collection. I think all of our consciences have been raised very high over the past five years or so about this. Now any museum worth its salt is proactively scanning its collection for problematic areas, specifically as they relate to the war, and provenance holes in that area. As far as things coming in for exhibition, we've been trying to do exactly the same thing. We've been trying to see in advance if we've got a problem. Now one of the ethical and legal questions I suppose is: so and so has agreed to lend you a picture, and you see that the picture has a problem. Do you tell the owner? Do you tell the owner only? If you know from whence it came, do you try to go out and alert somebody else with this knowledge that you have?

"Any museum worth its salt is proactively scanning its collection for problematic areas, specifically as they relate to the war, and provenance holes in that area."

Q: What *do* you do?

A: I'm happy to say we haven't confronted the problem yet. No, I think in that case, especially given the experience of recent cases, we would at a minimum alert the owner that we saw there was a problem, and I don't think we would want to exhibit the picture in that case until the problem is resolved. But you know not every case where there seems to be a problem turns out to be a problem. There may be an ambiguity, and that's enough. In the long run, it might turn out to be perfectly all right.

Q: I have a question about patrimony. What do you feel morally or ethically about a situation in which a museum has an object where there were issues of patrimony, and the American law favors, shall we say, the ownership remaining with the museum, but the European country or the foreign county's law is definitely in favor of it being

Kirk Varnedoe flanked by Charles Bergman, Chairman of the Pollock-Krasner Foundation, and Sharon Flescher, IFAR's Executive Director. *IFAR Evening*, October 26, 1999.

returned? What's the moral or ethical position of the museum in that situation?

A: Well, when we used to argue the Elgin Marbles, for example, should the Elgin Marbles be returned to Greece? The question is does it make a difference whether you are

Ruth Bowman speaking with Shelby White. *IFAR Evening*, October 26, 1999.

returning them to the Junta or a democratically elected government?...Can anybody in any country pass a set of laws that says we own everything that was ever produced in this earth, and we want it back? This is not an exaggeration. There are close to such laws being passed. If it came out of our earth, we want it; and you got it, and you got to give it back...My feeling is that if such a law had been passed by a government in what I would regard as an arbitrary attempt to disrupt the repose to society in certain respects, I don't think I would be tempted to respond to it. On the other hand, if you could show me that what I have on my walls had been chain-sawed out of a site in Guatemala four years ago and was presented to me under dubious premises, I think I would be in a hurry to figure out who owned it. Get it off my walls and back where it belongs.

VARIOUS

Q: I have a question on a different light. You were talking about the museum's role vis á vis *Demoiselles d'Avignon*, as a protector perhaps of the artist's interests notwithstanding that his family has an interest more recognizable by the law. I have a question vis á vis living artists whose works happen to be in your collection, where they own the copyright. Do you think museums have moral obligations to allow artists into the museum to take reproductions of their own works, for their own purposes, for their own licensing purposes. Or do you think that a museum should rightfully put some restrictions on the right of an artist to get in and get access to their own work?

A: I would hate to ever try to restrict access to the works of living artists. I mean that would seem to me a non-starter. When we acquire a work, we ask the artist to grant us a non-exclusive license to reproduce the work in our catalogue, in our publications, on our web site. So that we don't have to keep going back paying him a copyright for our use and very often that's granted. But it can produce problems, for example, with photographers, who have their own interests on the web distributing their work and trying to control it. It's not an open and shut decision. But certainly in the painting and sculpture department, that I would speak for, I can't imagine a situation in which a living artist would want to obtain an image of his or her work where I would say "No."

Q: The Ringling Museum in Sarasota, Florida lists on the label itself a painting's source, the price the museum paid for the painting at auction or from a dealer, and the dealer's name. Do you think that such a policy would be either feasible or desirable in any of the major museums in New York?

A: In a word: "No." And in a second word: "No again." I certainly do not think it is feasible. We generally protect transactions; we don't release prices for pictures. It protects lots of different parties involved in it, and we want to keep the focus of the public on other issues. We didn't buy the picture because it was expensive; we bought the picture because we thought it was a wonderful picture. And sometimes considerations of price tend to blot out everything else. Now, scholars for whom the information is important can eventually get access to it. But we do restrict that information, and I certainly don't foresee the day when it is coming up on the label anytime soon. Do you think it should?

Q: The standards are changing, and since this is part of the history of a painting. Certainly when museums pay a lot for a painting at auction that adds to the interest, the popular interest of people going to see it. In that case the museums are not shy about announcing the price.

A: The museum has no control over it if, in fact, it has been paid at auction. So the museum does not announce the price. I can't think of a museum that ever announces the price unless the price is a matter of public record like, for example, an auction purchase. I don't think any museum that I can think of is in the habit of willfully banner headlining the price it pays for something. ...Down that road would be translate it into constant dollars for pictures that were bought in 1950 for $400 and then now do we put their current worth? How about running digital clocks of advancing worth?

Q: Mr. Varnedoe you mentioned that there were just not enough people being trained to authenticate, to research, to do provenance. So, this is a very practical question. Is the museum and are IFAR and other organizations now looking toward training or mentoring people or developing this at least for the time being in a generation that is somewhat less than skilled?

A: We went out and tried to hire a full–time provenance person, did an enormous amount of interviewing to try to find the right person....It becomes very difficult to find just the right mix of things....Fifteen years ago, if you'd gone out and combed the art history schools graduates, you'd have found that an enormously high percentage had this ability, at least at a base line level, spoke the grammar. That's not something you find to be true today....Well, there are two things. Connoisseurship is one thing, which is teaching people how to look at objects, but the other is how to use a library, how to be a bloodhound. How to know where to smell a lead, how to pursue something, how to pursue original research, how to work archives, work tax records, find out where people live, find out what the marriage birth and death records are, and that sort of thing. That level of primary research is utterly disinteresting to people whose primary concern is with large theoretical constructs and how big movements in art inform or don't inform those constructs. They have no use for that information whatsoever, and they're never taught to get it.

Q: To change the subject drastically, but it still has to do with lawsuits. Has the Brooklyn Museum's situation [re: the "Sensation" exhibit] influenced policy, practice, or thoughts about organizing exhibitions at your museum? And are you planning to make any more forceful statements about what's happening there aside from Glenn Lowry's [Director of MoMA] statement?

A: The question is better put to Glenn. He's certainly the spokesman on this. The museum speaks with one voice on this issue, and it's his voice, although he consults with a lot of us there. So I would never make an official statement and pre-empt his right to do so. It goes without saying that it has taken up an enormous amount of our time, like any citizens of New York, but even more so perhaps. We've been deeply concerned with the issue. I think all of us have been depressed at the degree to which, once again, the price you pay for getting lots of coverage for art is that art's turned into a circus. There seems to be insane cynicism on all sides of these issues, and everyone seems to be happy, except people who care about the experience of art.

"Can anybody in any country pass a set of laws that says we own everything that was ever produced in this earth, and we want it back?"

Mr. and Mrs. Karl Meyer *IFAR Evening*, October 26, 1999.

Q: At the time of the seizure of the two Schiele paintings from your museum there was an outcry by museum directors. People saying that there would never be another loan exhibition, that no one would loan paintings if this was allowed to happen. In fact, do you know of any actu-

Professor Theodore Reff, Columbia University, with Kirk Varnedoe. *IFAR Evening*, October 26, 1999.

al cases where people have not lent paintings that you've wanted?

A: Lenders are always looking for excuses, by the way. When you're trying to persuade someone to lend a picture, they love to have an easy excuse so they can tell you "No." It's hard for me to tell how many of the times that we've been told "no" on this account were valid or not. Whether people were just hiding behind it. We have been told "no" on this account for loans a couple of times in our experience, and I'm sure it's happened to other people. I don't know that there's a register of number of times it's happened. And as I said, people often are just skittish, there's nothing wrong with the picture, no reason to doubt it; they're just skittish, and they don't like the idea. Shortly, hard on the heels of what happened in New York, a judge seized a whole group of Rauschenbergs from an exhibition because Bob [Rauschenberg] owed a debt to some guy who is claiming that Bob hadn't paid his bills, in Houston. If you get to that level, then you really get unhappy numbers of divorced spouses who go after the works because of the settlement, you know. The prospect is fairly scary, and I don't think it's at all an irrational fear, that a chill is put on the free flow of loan exhibitions by that action.

Q: I'll leave you with an anecdote. We had a matter a year and a half ago involving the statute of limitations...[and] the loss of evidence. This was a holocaust claim. It turned out we were able to establish a very rare circumstance. That the object in question, in 1942, had been given by the owner to his mistress and documented as such. She had passed it on. The wife, old, infirm, and wanting the object back, now had to be confronted with the evidence....The matter was put to rest.

A: Put to bed would be more like it.

Sharon Flescher:
I think that may be the proper note to end this talk tonight. So I want to thank Kirk, and thank you all for coming.

▪ ▪ ▪

Original Intaglio Print or Photomechanical Copy?

Confusion at the least and fraud at the worst can result from the frequent appearance in private collections and the marketplace of fine reproductions made from Old Master etchings and engravings. The invention of photography in the 19th century led to the development of a number of new copying processes that combined traditional intaglio methods with new photographic techniques. This and the renewed interest in Old Master etchings in the second half of the 19th century catalyzed a flood of deceptive copies intended to spread the images, but not to defraud the public. However, some of the reproductions made in the 1870's using these photomechanical methods were so faithful to the original prints, that today it is easy to confuse them.

A case in point is an investigation of a high quality reproduction of an etching depicting St. Catherine (Fig. 1).[1] The reproduction, thought by the owner to be an original, arrived at the Conservation Center, Institute of Fine Arts, New York University in the winter of 1999 for treatment of its foxing and matburn. In the process of examination, it quickly became apparent that the print was a copy and not an original 17th-century impression.

The original print is attributed to Rubens and is dated 1620-21. The etching shows the saint standing on a cloud. She is holding a sword and her left foot is on a broken wheel symbolizing her martyrdom. In the lower left corner of the print appears an inscription "P. Paul Rubens fecit". The copy was examined side by side with an excellent impression of the etching belonging to the Metropolitan Museum of Art (Fig. 2).[2] The comparison of the two prints led to the following observations:

Paper

The original impression is printed on a light cream antique laid paper, with no watermark. The copy is printed on a dark-

Figure 1. Reproduction of Peter Paul Rubens' Saint Catherine. Heliogravure by Charles Amand-Durand. Private collection.

Figure 2. Peter Paul Rubens, Saint Catherine. Etching. The Metropolitan Museum of Art, Purchase, Joseph Pulitzer Bequest, 1917. (17.50.15-336)

[1] Number 75 in Ludwig Burchard's *Corpus Rubenianum* (London and New York: Phaidon,1972), Part VIII, Saints I, p. 116.

[2] The Metropolitan Museum of Art, Purchase, Joseph Pulitzer Bequest, 1917. (17.50.15-336)

er yellowish antique laid paper. A prominent watermark of the Van Gelder Zonen paper mill is evident along its left edge (Fig. 3). The paper of the copy appears to be much too modern for the 17th century. Indeed, subsequent research showed that the Van Gelder Zonen firm was established in the Netherlands in 1784.[3] This ruled out the use of its papers by Rubens or his contemporaries. The darker color of the copy could be due to the conscious selection of the tinted paper in order to make the print appear aged.

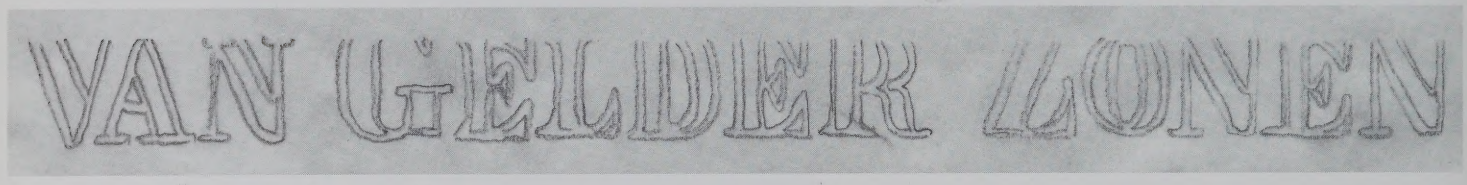


Figure 3. Tracing of the Van Gelder Zonen watermark.

Ink

The ink of the original impression is black, while the ink of the copy is brown. Again, it is possible that brown ink was used to create an antique appearance, as some black inks turn brown upon aging. In both the original and the copy, the inked lines stand in relief, indicating that both were created using an intaglio printing process.

Dimensions

The size of the platemark in the original impression is 29.4 x 19.8 cm, which corresponds to the dimensions of the image. The copy does not have a platemark, and the size of the image is 29.7 x 20.0 cm. The lack of a platemark in the copy suggests that the plate onto which the image was etched was larger than the paper support.

Resolution of Detail

Examination of both prints under magnification showed substantial loss of fine detail in the copy when compared to the authentic impression. This is particularly evident in the face and forearms of St. Catherine. The tiny flecks used for modeling of the flesh and for depicting transition between light and shaded passages are missing in the copy.

Distinguishing Marks and Stamps

A turning point in the investigation was the discovery that the red-inked stamp on the verso of the copy belonged to Amand-Durand (Fig. 4).[4]

Charles Amand-Durand (France, 1831-1905) perfected a photomechanical reproduction process called heliogravure in the latter part of the 19th century. He specialized in reproducing Old Master prints[5] and was known to use Van Gelder Zonen paper and brown ink for his copies.[6] A catalogue of Amand-Durand's copies that was published in 1912 by George Rapilly, a French dealer of prints, lists the reproduction of Rubens' *St. Catherine* print among those for sale.[7]

Heliogravure

Heliogravure (also known as photogravure) is a photomechanical reproduction process that uses light-sensitized acid-resisting ground for etching a copper plate. There were many variations in the details of the technique. The exact nature of the process used by Amand-Durand is not clear, since no documentation on how he produced his copies exists. It is probable that he used a transparent photographic positive of an original print that was placed on a plate covered with bichromated gelatin. When this was exposed to light, the gelatin

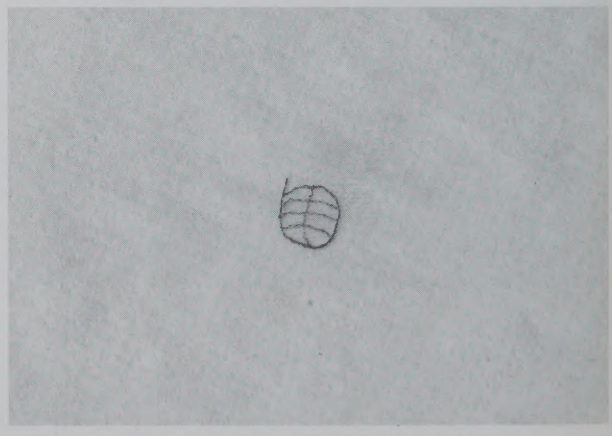


Figure 4. Tracing of the red ink stamp

[3] Jane De Iongh, *Van Gelder Zonen 1784-1934*, (Haarlem: De Erven F. Bohn N.V., 1934), p. 48.
[4] I would like to thank Suzanne Boorsch, Associate Curator, Department of Drawings and Prints, Metropolitan Museum of Art, for this observation.
[5] Antony Griffiths, *Prints and Printmaking: An Introduction to the History and Techniques*, (London: British Museum Publications Limited, 1980), p. 124.
[6] F.L. Wilder, *How to Identify Old Prints* (London: G. Bell and Sons LTD., 1969), p. 19.
[7] George Rapilly, *Catalogue D'Estampes des XVe, XVIe et XVIIe Siècles*; Reproduites par Amand-Durand, Paris, G.Rapilly, 1912?, p. 17.

There are a number of reasons why it is so difficult to distinguish a heliogravure reproduction from an original print.

under the dark lines of the print remained soluble in water, while the areas that were exposed to light under the transparent portions of the image hardened and became insoluble. The soft gelatin was then washed away with water, and the plate was exposed to the etching action of an acid bath. The hardened gelatin remaining on the plate acted as an acid resist, allowing the plate to be etched only in places where the original lines of the print had been. Not only did the heliogravure method duplicate the image faithfully, it also allowed the copier to reproduce the degree of darkness for each line. When gelatin is exposed to the sun under the transparent positive, the lines that are lighter in the original protect the gelatin from the sun less than the darker lines. Consequently, the gelatin under the lighter lines gets harder than the gelatin under the darker lines, and less of it is washed off with water. As a result, there is more gelatin left to resist the action of the acid on the plate. This produces shallower lines on the plate, which result in lighter lines in the copy.[8] After the plate was prepared in the above manner, it was inked up and printed like any other etching.

There are a number of reasons why it is so difficult to distinguish a heliogravure reproduction from an original print. One of them is that heliogravure copies are intaglio prints and hence their inked lines have a three-dimensional quality, like their originals. Lines in planographic copies (i.e., lithography or photocopy) , on the other hand, are flat and therefore easier to distinguish from original impressions. The detection of a copy is somewhat simplified if the original print was an engraving as opposed to an etching, since heliogravure itself is a form of etching.[9] An additional difficulty in detecting heliogravure reproductions is that the printing method used to produce them creates a platemark, as does the original printing technique.

Methods of Determining Authenticity

When investigating the authenticity of a print, it helps to examine it side by side with a known authentic impression of the same print. The reproduction will only be as good as the photographic image that was used to copy the original. It is possible that the finer details of the print will not be picked up by the photograph, and so will be missing from the copy. Some researchers point out that another way to distinguish between an original etching and a photomechanical reproduction is to compare them in raking light (a strong light cast almost parallel to the paper). In the hand-etched plate, the depth of the etching will vary greatly, but in a heliogravure, there is less variety in the depth of the lines. In addition to that, the total depth of the etch in a heliogravure is generally less than in a hand-etched plate. These differences will be seen as variations of relief of the ink above the paper.[10]

The 19th century was the time of experimentation aimed at developing mechanized printmaking techniques. The discovery of heliogravure and similar processes coincided with a renewed interest in etching and increased demand for fine reproductions of Old Master prints,[11] with the result that such copies became quite common by the 1870's.[12] The reproductions were of extremely high quality and usually printed as expensive single sheets. Compounding the profit-

The discovery of heliogravure and similar processes coincided with a renewed interest in etching and increased demand for fine reproduction of Old Master prints, with the result that such copies became quite common by the 1870's.

making incentive was the fact that the dealers who published and sold the reproductions were also involved in selling the original prints.[13]

It must be pointed out, however, that these copies were not created with the intent to deceive. Amand-Durand, for example, made his reproductions as honest artistic records. To avoid any confu-

[8] Bamber Gascoigne, *How to Identify Prints: A Complete Guide to Manual and Mechanical Processes from Woodcut to Ink Jet*, (New York: Thames and Hudson, Inc., 1986), p. 38a.
[9] See Griffiths, *Prints and Printmaking*, p. 124. In engravings the line tapers to a point; whereas, in original etchings and in heliogravure, the ends of the lines are blunt and rounded.
[10] S.W. Hayter, *About Prints*, (London and New York: Oxford University Press, 1975), p. 137.
[11] Ibid., p. 32.
[12] Ibid., p. 38a.
[13] Griffiths, *Prints and Printmaking*, p. 124.
[14] Frits Lugt, *Les Marques de Collections de Dessins & d'Estampes. Supplement*, La Haye, M. Nijhoff, 1956, p. 542.
[15] Estelle Jussim, *Visual Communication and the Graphic Arts; Photographic Technologies in the Nineteenth Century*, (New York and London: R.R. Bowker Company, 1974), p. 248.

sion, he applied a red publisher's stamp to the verso of all his prints.[14] Unfortunately, it was easy for people with less integrity to duplicate plates and pass them off as original prints.[15] The red ink stamps can also be removed. With time, the names of Amand-Durand and others involved in the reproduction business have been forgotten. Consequently, it is easy to confuse their stamps with collectors' marks, as was mostly likely the case with the copy of St. Catherine in question.

Despite the copy's numerous, and on second glance, quite obvious, inconsistencies, it is not surprising that it was mistaken for an original impression. After all, as Wilder states, "reproductions made by photogravure dating from the 1870's are among the most deceptive copies."[16]

In summary, what questions should be asked when determining the authenticity of an intaglio print?

Paper
Is the paper of the print consistent with its purported date? Possible clues that can assist in the dating of the paper are the marks left by the process of paper manufacture and any watermarks present. Until the 1750's, paper was made on a mesh that consisted of thicker "chain" wires about one inch apart, with finer wires laid close together across them. The paper produced by that method is called "laid" and the pattern can be clearly seen when the paper is held up to the light. Around 1755, paper began to be made on a more finely woven wire mesh. This type of paper is called "wove" and does not exhibit a pattern of lines.[17] Although laid paper continued to be made after 1755, the construction of the mould changed in the latter part of the 18th century. Before that time, the chain wires were sewed directly to the supports of the moulds, which caused the paper pulp to lie thicker along the sides of every "chain-line." This results in the paper being thicker (and hence darker when viewed in transmitted light) along the chain-lines. This type of paper is called "antique laid." Laid paper made after 1800 was made in a different kind of mould, unless older paper was being consciously imitated. The chains in the new moulds were separated from the supports, with the result that the paper made in those molds lacks the greater opacity along the chain-lines.[18]

Ink
Is the color of the ink the same as that of known authentic impressions of the print? While variations of ink color can occur in original prints, a difference suggests the need for a closer look.

Dimensions
Is a platemark present? Are the dimensions of the image and the platemark the same as those of known impressions of the print? While platemarks were often trimmed down, their absence indicates need for closer scrutiny.

It must be pointed out that these copies were not created with the intent to deceive...Unfortunately, it was easy for people with less integrity to duplicate plates and pass them off as original prints.

Resolution of Detail
Is there a loss of fine detail in the image? Are the lines of the copy more uniform and shallower in relief than that of known authentic impressions? Poor impressions of original prints also have fewer fine details, but an overall loss of liveliness should be studied carefully.

Distinguishing Marks and Stamps
Are there any marks or stamps on either verso or recto of the print? If such marks are present, do they correspond to marks that belonged to people involved in making reproductions, as recorded in the reference literature?

The process of distinguishing heliogravure reproductions from authentic prints can baffle even experts. The fear of confusing a photomechanical reproduction with an authentic print is "one of the nightmares haunting even experienced connoisseurs."[19] On the other hand, perhaps as their social context is better appreciated and the process of heliogravure is better understood, heliogravure reproductions may gain proper recognition in the history of printmaking. In the meantime, it is hoped that the information in this article will help the collector avoid the disaster of mistaking high quality 19th-century reproductions for their originals.[20]

Maya Naunton
Third-year graduate student
Conservation Center,
Institute of Fine Arts, NYU

[16] F.L. Wilder, *How to Identify Old Prints*, p. 17.
[17] Gascoigne, *How to Identify Prints*, p. 70b.
[18] Dard Hunter, *Papermaking. The History and Technique of an Ancient Craft*, (New York: Alfred A. Knopf, 1957), pp. 121-123.
[19] S.W. Hayter, About Prints, p. 136.
[20] I would like to thank the following people for their assistance with this project: Suzanne Boorsch, Margaret Holben Ellis, Frances Huemer.

A New Legal Twist in Art Authenticity Cases: The Lanham Act

Does the only true test of authenticity consist exclusively of a technical analysis of pigment and canvas? Clearly, in our judicial system which measures the determination of "facts" by live testimony, the "opinion" of experts can affect the determination of authenticity. In the case of an expert who has no financial or personal interest in the issues, one should be able comfortably to leave the dispute feeling that objectively the truth has been found.

But what if the "experts" expressing an opinion are the parties to the dispute and have a substantial financial or personal interest in the outcome? How is the law to treat that opinion? And what is the underlying legal theory to resolve that dispute?

In a recent decision in the Southern District of New York, the Court was confronted with that question in the case of *Boulé and Boulé v. Ingrid Hutton, Leonard Hutton Galleries, Inc., and Mark and Regina Khidekel,*[1] children of the Russian avant-garde artist, Lazar Khidekel, who died in 1986. The plaintiff, Parisian art collectors, claimed to own more than 150 Khidekel paintings, and intended to sell a substantial part of their collection.

The defendants Khidekels, a son and daughter-in-law of the artist, and the Hutton Gallery in New York were alleged—and essentially conceded—to have stated that the works owned by the plaintiffs were not that of Khidekel. Suit was brought under the Federal Lanham Act which was enacted to prevent misrepresentation of the nature of a person's goods and to prevent unfair competition and false advertising. A key basis for utilizing the statute is that the disparagement of "goods" or unfair competition be in connection with "commercial advertising or promotion." The prohibited practices must be by one competitor against another; the cases have held that the simple protection of consumers is not a basis for protection under the Act.

In this case, the defendants were alleged to have made four types of disparaging statements:

1. Statements made to at least three separate individuals—each of whom was interested in the work of the artist—indicating that the works of the plaintiffs were fakes;
2. Statements made to the editors of *ARTnews,* who were preparing an article on Russian avant-garde art, which the individual defendants conceded accurately quoted their stating: "I don't know whether they're fakes or works of somebody else…I only know, and we are absolutely sure, that they have nothing to do with Khidekel";
3. A statement of Hutton in a 1995 catalog that was issued in connection with the gallery's exhibition of Khidekels that:
   a)"We present f*or the first time anywhere* the work of Mark Markovich Khidekel" and
   b)neither "[K]hidekel [n]or his family ever [sold] or part[ed] with any of his works" and
4. A so-called "Repudiation Letter" written by the defendants to at least 25 museums that had exhibited Russian avant-garde art, stating that a 1992 catalogue published by a Canadian museum in 1992 accompanying an exhibition of Khidekels owned by the plaintiffs was to be "repudiated."

Judge Miriam Goldman Cedarbaum held that the statements made to the three individuals and the statements made to the reporters for *ARTnews* did not represent "commercial advertising or promotion" because the defendants did not initiate contact at *ARTnews* and they did not take any "proactive or affirmative steps with respect to the *ARTnews* article." She further ruled that the Repudiation Letter was not a statement of fact about anyone's goods. As a result, only the statements in the Hutton catalogue met the test for violation of the Lanham Act. Accordingly, the defendants' motion for summary judgment was granted and denied in part.

> While the decision [by Judge Cedarbaum] may be consistent with prior Lanham Act cases, it seems to be some distance away from the realities of the art market.

On reflection, the opinion seems odd. To limit "commercial advertising or promotion" to a statement made in a catalogue for a Madison Avenue dealer—although concededly the major dealer in Russian art—but to deny its "commercial or promotional" impact to statements made to individuals who are intimately involved in Russian art (and thereby could have a significant influence on the market) and to deny impact to statements made to *ARTnews*—probably the art publication with the largest circulation in the United States—can certainly have a consequence far greater than a statement in a catalogue

1 1999 U.S. dist. LEXIS 15731 (S.D.N.Y. 1999) (decided October 12, 1999).

issued only to those visiting the gallery. To decide the issue of "commercial advertising or promotion" on the basis of whether a statement by a competitor was "proactive"—when it was clearly made to affect the marketability of a competitor's goods—seems to rely on a perception not found in the Lanham Act itself.

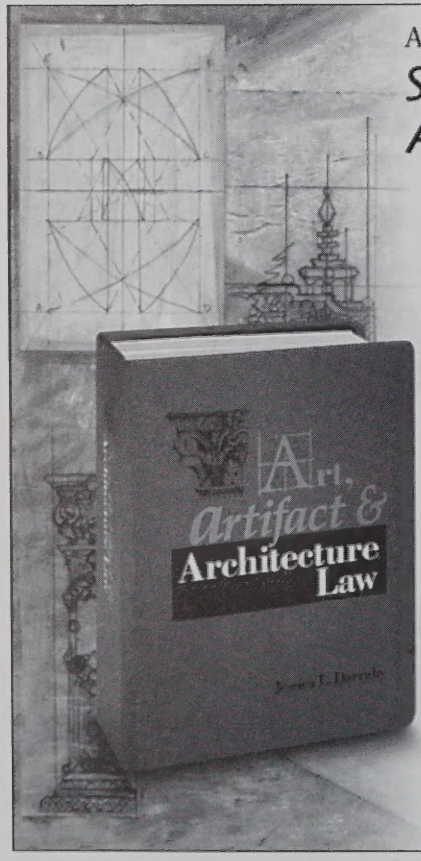
Thus, while the decision may be consistent with prior Lanham Act cases, it seems to be some distance away from the realities of the art market. The case, limited as it is the Lanham Act, avoids any discussion as to whether the defamation claims are subject to whatever protection the First Amendment to the United States Constitution, as well as the New York Constitution, might provide, as was discussed in the 1991 case of *McNally v. Yarnall*,[2] which involved disputed opinions about the stained glass work of John LaFarge.

The decision by Judge Cedarbaum is, of course, not the last word in the case. The decision simply holds that, under the facts alleged, a cause of action may be set forth under the Lanham Act. There will now be required a trial dealing with the question of the truth of the statements made by the defendants—namely, are the defendants the only possessors of the works of the artist and, correspondingly, are the works owned by the plaintiffs fakes? Furthermore, in contrast to suits under the libel laws, where truth is a defense, how will the case be determined if the "truth" cannot be clearly determined, but the statements of the defendants were made maliciously? And who will have the burden of proof?

One side of the case, of interest perhaps more to art lawyers than to art historians, is whether the Lanham Act has now become the art legal weapon of choice. It has now been used to establish the existence of a "moral right" claim in the United States (see *Gilliam v. American Broadcasting Co.* upholding the moral right claim of Monty Python[3]) and now in the Boulé case, the basis for the disparagement of the works of a collector of art. Will it now be used in the area of stolen art to claim that a work being offered by a competitor has a dubious provenance, perhaps stolen from an heirless holocaust victim? The imagination of lawyers is only slightly less than that of art historians or art "experts." And inasmuch as the legal fraternity has a more covenient access to the judicial system and its imperfections, perhaps the creative aspects of the Lanham Act have only begun to surface.

Franklin Feldman, Esq.

2 764 F. supp. 838 (S.D.N.Y. 1991).
3 538 F. 2d 14 (2d Cir. 1976).



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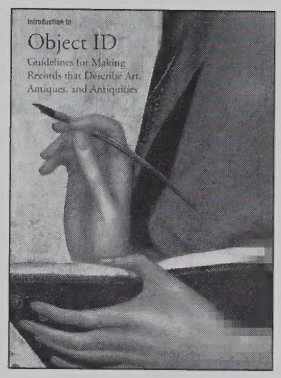
Book Review

Robin Thornes with Henry Lie and Peter Dorrell, ***Object ID: Guidelines for Making Records that Describe Art, Antiques, and Antiquities***, ix, 61 pp., 29 figs. Soft cover. (Los Angeles: The J. Paul Getty Trust, 1999)*



The appearance of *Object ID: Guidelines for Making Records that Describe Art, Antiques, and Antiquities* reminds us that an important milestone in the fight against art theft was reached in 1997, when, for the first time, international organizations across many sectors agreed on a standard—known as Object ID—for describing objects in order to trace, recover, and return them to their rightful owners. At least as important, the agreement set the stage for the information about a stolen object to travel, through global electronic networks and across diverse databases, faster than the object can be spirited across borders.

This small book, intended as a portable field guide, leads the reader through the process of describing objects according to ten categories of information.

This small book, intended as a portable field guide, leads the reader through the process of describing objects according to ten categories of information. The categories were distilled from results of a worldwide survey and then roundtable meetings involving the myriad communities connected with tracking art theft.

The book is divided into two parts. In Part I, information categories such as "Type of Object," "Measurements," "Subject," and "Description" are explained in simple language and supplemented with examples both basic and expert. Part II, entitled "Photographing Objects for Purposes of Identification," comprises a short but very valuable illustrated guide to the special requirements of capturing photographically the features that distinguish similar objects from each other.

The effort to forge a coordinated assault on art theft goes back many years. In the 1970's, IFAR played a major role by developing, first, a manual and then a computerized file on stolen art in consultation with the Museum Computer Network, the museum community, the insurance industry, the art trade, and collectors. That database and its record structure were licensed to and remain at the core of the Art Loss Register's ongoing collection of information about stolen works.

In time, many organizations and agencies built their own databases, each with a different, though overlapping, selection of information. What was lacking, however, was agreement among all interested parties as to the most essential information that needed to be shared quickly, without laborious recopying and reformatting as it crossed agency, company, and national lines. The solution was Object ID, the name for an international standard that lists the minimum information needed to identify valuable objects. It can "nest" within more elaborate data, ready for quick extraction and transmission to other parties.

Every community collects different information about objects...The Object ID project asked them all, 'What is the essential information you would need to recognize and report or seize a stolen object?'

The Object ID categories can be viewed in the table of contents of *Introduction to Object ID* or at www.object-id.com/checklist/check_eng.html. While a perusal of the single sheet required for this cryptic list might strike the expert as obvious, what is hidden is the elaborate process that was required to reach the simplicity of Object ID.

Every community collects different

*The project that produced Object ID was established by the Getty Information Institute, in cooperation with leading national and international organizations and agencies. Its rationale, history, strategy, and collaborators are briefly described in the first eleven pages of the book. *Object ID* can be ordered from Getty Trust Publications, Los Angeles, or on-line from the Getty Trust, http://www.getty.edu/publications/titles/obid/index.html

information about art objects: museums, appraisers, conservators, police, insurance companies, the art trade, national inventories, customs officials, private collectors. The Object ID project asked them all, "What is the *essential* information you would need to recognize and report or seize a stolen object?" Posed that way, the question yielded remarkable consensus, with only about 10% disagreement to be reconciled. *Only* 10%. For three years, groups convened to argue for their points of view, to reconsider, and to think of the larger picture. Finally, the present record structure of ten categories of information, plus a photograph, was distilled and agreed upon by those many communities.

No one sector can recover a stolen work of art without the collaboration of many other sectors. Moreover, a number of conditions must be in place before those sectors can do their jobs. First, a clear record describing the object has to *exist*, and exist before the object is stolen. Police cannot return stolen goods to their rightful owners without proof of ownership. No one can hunt for the work if the only description is "landscape" or "Victorian table."

Second, that clear description has to circulate quickly among many organizations and agencies, especially police and customs officials in many jurisdictions. The record may pass from the museum or the insurance company or the private collector, to the police and customs networks, while the art trade, appraisers, conservators, and (once again) museums and private collectors must be alerted to watch for it. In addition, there are now numerous organizations collecting, coordinating, and recirculating this information as both commercial and not-for-profit services.

Through this complicated "food chain," the recorded description must pass as fast as the stolen object now passes across regional and national borders. And when it reaches the databases of all these communities, that record must pass seamlessly into diverse systems that collect many aspects of object information. It must be in a standard form that can be transmitted and received in varied environments.

Object ID gives pride of place to physical information about size, materials, and markings...

Third, the information needed by a museum is very different from that needed by a police or insurance agency. The museum's designation, "Titian's *Venus and Adonis*, Venetian, 16th century," is of no use whatsoever in tracing and recovering a painting. Object ID gives pride of place to physical information about size, materials, and markings, with traditional art-historical information placed well down the list.

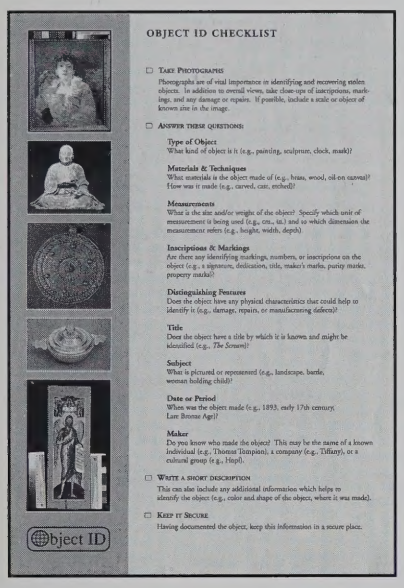
Thus, the information called for by Object ID is viewed through a new lens, one that does not change the consensus that cuts across the common practices of each community, but that reconciles this brief, standardized information with a focused and vitally important goal.

Who will collect Object ID information? The consensus-building process revealed unexpected roles for the various constituents. Museums, for example, already collect most of the information called for by Object ID. Their problem is to extract a quick, simple, standardized record from a welter of rich information. The vendors of computerized museum systems have thus been approached for cooperation in flagging Object ID categories within complicated, more comprehensive records. Those systems will now allow a standard Object ID record to nest within that complication and to be pulled quickly from a database for immediate transmission.

Law enforcement agencies need to communicate not only across national borders but within complicated bureaucracies of local, regional, and multinational structures, e.g., from the Los Angeles Police Department to the FBI to Interpol. The Italian and French national art-theft police, for example, both collect high-quality information about stolen art objects, but the information takes very different forms in the two countries' databases. Object ID allows them to bypass their differences and facilitates the quick exchange of information.

The community of appraisers/experts was recognized as quietly creating perhaps as many object records as do museums. That profession has welcomed Object ID as a standard for the basic nugget of essential information with which to begin a record. The insurance industry, which has depended on the owner of the work for information on stolen objects, now has a model record structure with which to request consistent information from its clients. Collectors themselves can use Object ID as a guide to simple inventories that will protect their precious works. And so it goes: a neutral consensus, arrived at without allegiance to one community's point of view or another, serves multiple purposes in pursuit of the same goal.

One of the most interesting and novel aspects of *Introduction to Object ID* are the sections on the information category



Object ID Checklist.

"Distinguishing Features" and on "Photographing Objects for the Purpose of Identification." We assume that objects such as silver candlesticks, hand-manufactured furniture, and prints adhere to common models. We tend to forget that paintings and sculptures, aside from famous works by major masters, are also very repetitive. How, then, to distinguish *your* work from many others that look the same? In his chapter on "Distinguishing Features," Henry Lie, of the Harvard University Art Museums, gives us the solution. You look for the imperfections, peculiarities, and damages that make your work unique. In Part II, Peter Dorrell (now deceased) explains how to photograph those peculiarities, as well as the requirements of difficult-to-photograph surfaces.

Introduction to Object ID is a slim book (only 61 pages) for good reason. Massive art theft is afflicting cultures that have scant resources compared to their historical riches. National inventories and ministries of culture, desperately in need of recording the works in their public buildings, archeological sites, and houses of worship, are already adopting *Introduction to Object ID* as a training mechanism for non-expert volunteers. With little training, a layman can take the booklet into a monument and apply it to creating inventory records on the spot, as a field guide. The Irish Ministry of Culture is using it in exactly that way, as is the Dutch Ministry of Culture for projects in Mali and Vietnam.

If art theft, as many experts suggest, is among the top three areas of illicit international traffic (in the dubious company of drugs and weapons), then *Introduction to Object ID* is a long awaited answer. The individual art collector should especially welcome its arrival, as a guide to cataloguing valuable objects that, once stolen, cannot be returned—even if found and recovered—unless they can be shown to be the unique possessions of the claimant.

Marilyn Schmitt
Consultant linking the arts and humanities to new media. Formerly, Program Manager, Getty Information Institute

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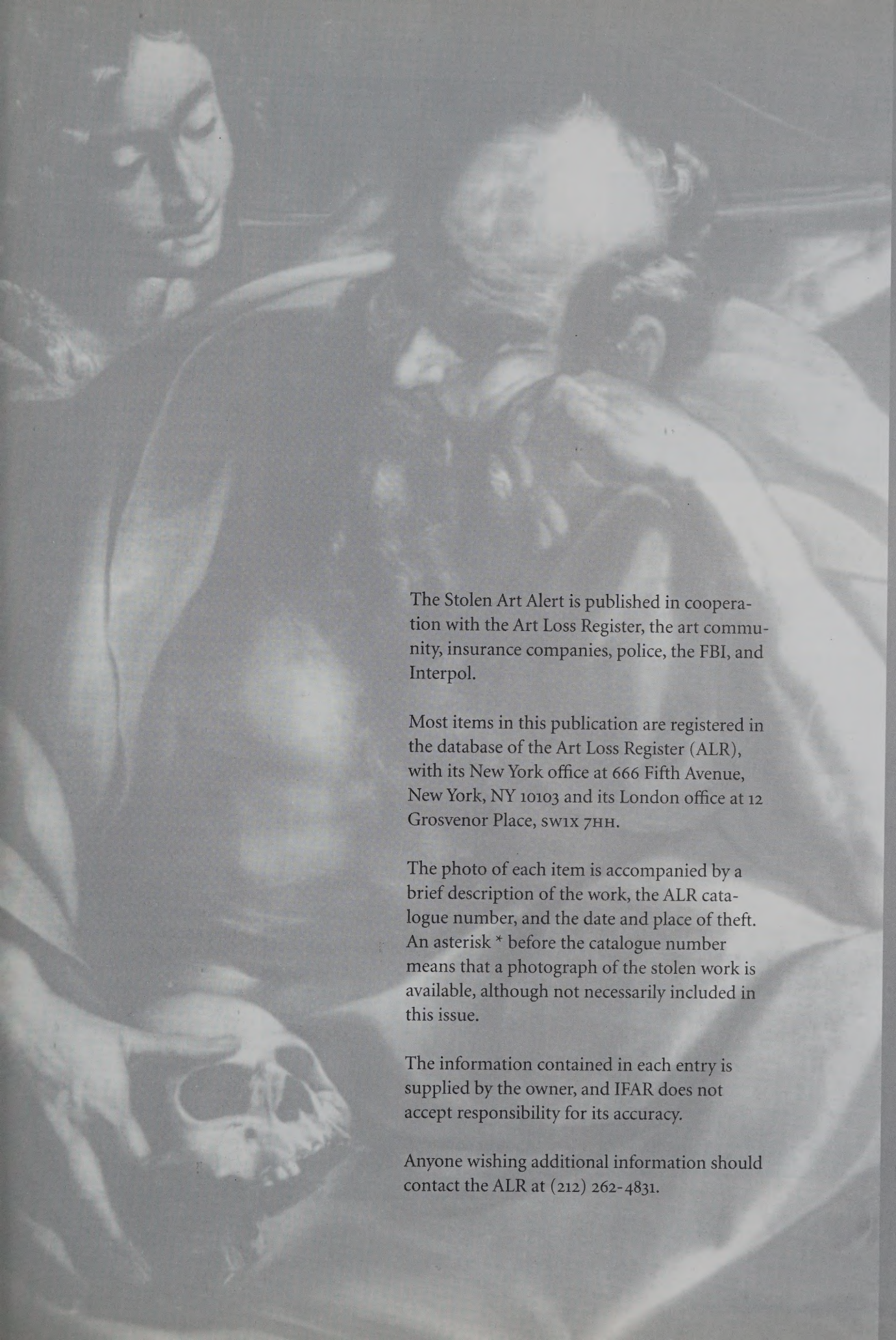

Stolen Art Alert

The Stolen Art Alert is published in cooperation with the Art Loss Register, the art community, insurance companies, police, the FBI, and Interpol.

Most items in this publication are registered in the database of the Art Loss Register (ALR), with its New York office at 666 Fifth Avenue, New York, NY 10103 and its London office at 12 Grosvenor Place, SW1X 7HH.

The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, and the date and place of theft. An asterisk * before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

The information contained in each entry is supplied by the owner, and IFAR does not accept responsibility for its accuracy.

Anyone wishing additional information should contact the ALR at (212) 262-4831.

Stolen Art

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PAINTINGS

65. Anna Mary Robertson (Grandma) Moses. (American, 1860-1961). *Down in Shenandoah.* Oil on canvas laid on board. 55.9 x 45.7 cm. Signed. .*L00.154. One of three Grandma Moses paintings stolen in a major theft from storage premises in the UK on Jan. 16, 2000.

66. Louis Comfort Tiffany (American, 20th century). *Mountain Landscape.* Watercolor. Approx. 18" x 18". Stolen from a museum in St. Augustine, Florida on March 3, 2000.

67. Paul Cézanne (French, 1839-1906). *Landscape of the Ile de France* (known as *Auvers*), ca. 1879-82. Oil on canvas. 46 x 55 cm. Signed l/l. *L00.10. Stolen from Oxford University's Ashmolean Museum in the early morning of January 1, 2000, while the city was distracted by New Year's festivities. Thieves entered through a skylight and deployed a smokescreen to conceal the theft from surveillance cameras. The painting, valued at £3 million, was the only Cézanne in the museum's collection.

The following two paintings by Norman Rockwell (American, 1894-1978) were stolen in Toronto, Ont. on November 15, 1999. *N99.200:

68. *Boy Holding Screaming Baby (Big Brother's Dilemma)*, 1921. 61 x 50.8 cm. Signed Norman Rockwell l/r.

69. *Waiting for the Art Editor*, 1970. Oil on canvas. 35.6 x 54.6 cm. Signed *nr*, l/r.

The following two paintings were stolen from a private residence in Genoa, Italy in March 1989. *L00.484.

70. Bernardo Strozzi (Italian, 1581-1644). *San Gerolamo.* Oil on canvas. 88 x 66.5 cm.

71. Sandro Botticelli, (Italian, 1444-1510). *Madonna con Bambino.* Arched top panel: 52 x 33.5cm.

72. Henk Helmantel (Dutch, 20th century). *Chinese Jar with three eggs,* 1977. 23 x 26 cm. One of 36 paintings stolen from the home of the artist in Westeremden, The Netherlands on February 25, 2000.

73. Michael Scolaro (American, 20th century). *The Marshes,* 1999. Oil on canvas. 9" x 12". Signed l/r. *N99.198. One of eleven paintings by the artist stolen in transit between Los Angeles and New York, NY on March 8, 1999.

74. Anna Richards Brewster (American, 1870-1952). *A Summer Morning in London,* ca.1900-10. Oil on canvas. 5 1/2" x 8". Estate stamp on verso: Anna Richards Brewster. *N99.197. Stolen from a Manhattan gallery on November 15, 1999.

75. Aert van der Neer (Dutch, 1603-77). *Peasants Skating on a Frozen River.* Oil. 11 x 24 cm. Stolen from a private residence in West Sussex, U.K., on Jan. 1, 2000. *L00.321.

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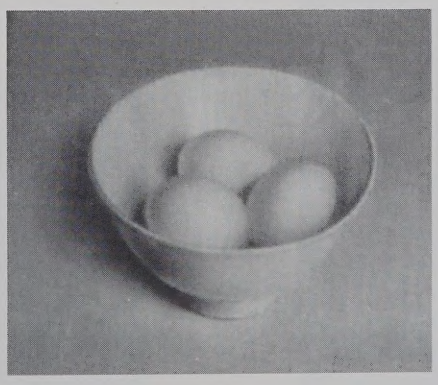

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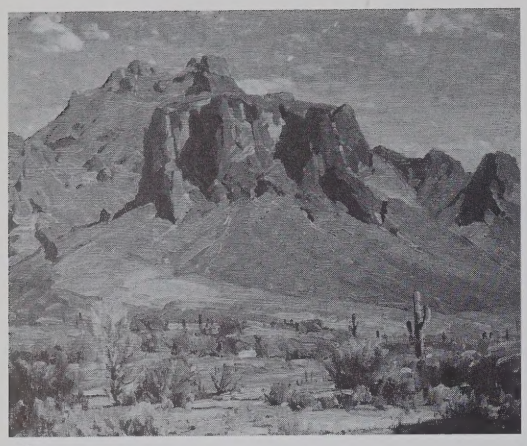

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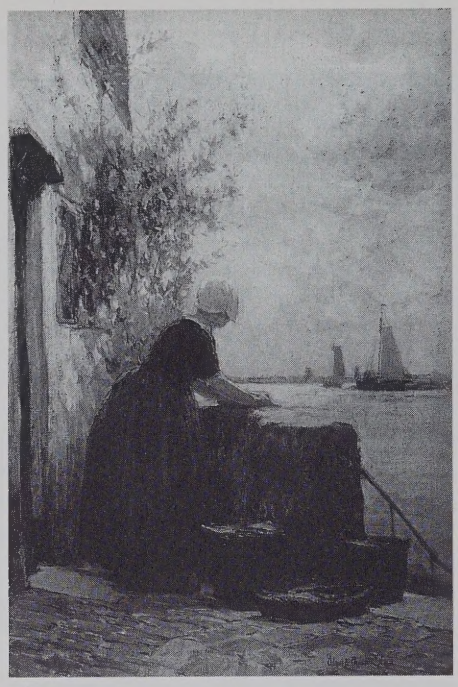

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The following are two of a group of paintings by California Impressionists stolen from four galleries in the Los Angeles, CA area in the summer of 1999. The thief, posing as an art collector under the alias Joseph Killibrew, paid for his purchases with checks that bounced. *N99.195.

76. Hanson Puthuff (American, 20th century). *Desert Rampart*, ca.1925. Oil on canvas. 26" x 30". Signed l/l.

77 Edgar Payne (American, 1882-1947). *Saddle Creek, High Sierra*, ca.1928. Oil on canvas. 25" x 30". Signed l/l.

78. Adam E. Proctor (English, 20th century). *Waiting for the Boat*, 1907. 17 1/2" x 11 1/2". Signed and dated. *L99.922. Stolen from a residence in Northamptonshire, U.K. on March 30, 1999.

79. L. S. Lowry (English, 1887-1976). *Street Scene*, 1957. Signed and dated. Oil on canvas. 10" x 14". *L00.154. One of five Lowry works among a collection of 59 paintings stolen from storage premises in Northamptonshire, U.K. in late January 2000.

80. *Reclining Venus* (19th century). Oil on canvas. 30" x 60". Stolen from a private residence in Laguna Beach, CA in 1992. *N99.223.

81. Jean Dufy (French, 1888-1964). *Still Life with Floral Bouquet*, 1920. Oil on canvas. 61 x 50 cm. Signed and dated 1920. Stolen from a gallery in New York, NY on March 31, 2000.

82. Raoul Dufy (French, 1877-1953). *Le Cirque*, c.1935. Watercolor on paper. 50 x 65 cm. *L99.2030. One of 19 Raoul Dufy paintings stolen in a large theft from a gallery in Paris between June 22 and July 16, 1999. Nine of the paintings have since been recovered.

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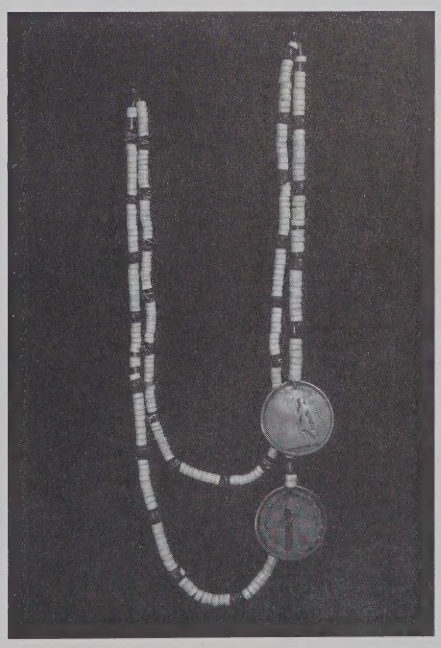

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The following two items were stolen from a moving van on December 6, 1999 while on loan to a Manhattan gallery from the Brooklyn Museum of Art. *N99.214:

ASTRONOMICAL INSTRUMENTS

83. Ziya'al-din Muhammed (Pakistani, active ca.1637-80). *Astrolabe*, ca. A.H. 1060/ 1650 A.D. Brass. 18 1/2" x 12 3/8" x 7/16". Acc. No. X638.2. Brooklyn Museum of Art Collection. Astrolabe has 6 units. Shown here is the main element, which holds 5 disks.

SILVER

84. Gorham Manufacturing Company (American, 19th century). *Waiter tray*, ca.1890. Sterling silver. 27 1/2" x 25 1/2". Engraved with a perspective view of the Brooklyn Bridge. Acc. No. 86.78. Gift of Mr. and Mrs. William H. Gilmore.

MISCELLANEOUS

85. Two *Medals from the Lewis and Clark Corps of Discovery Expedition* (American, 18th century). Bronze-like. Slightly larger than a silver dollar. *N99.194. Both depict a man sowing wheat and are of a type known as *Indian Peace Medals* or *Washington Season Medals* because they were originally minted for George Washington's second presidency and feature the four seasons. Stolen from the Maryhill Museum of Art in Goldendale, WA on September 17, 1986. When taken, they hung from a single leather thong with glass trade and shell-disc beads.

Missing Art

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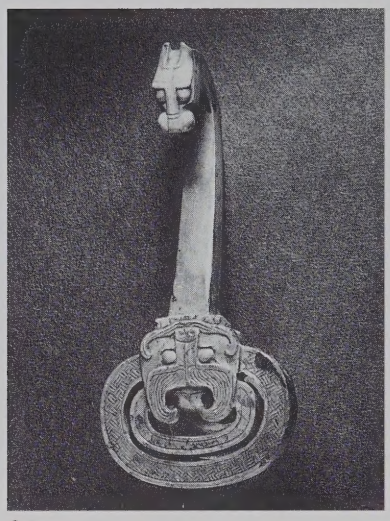


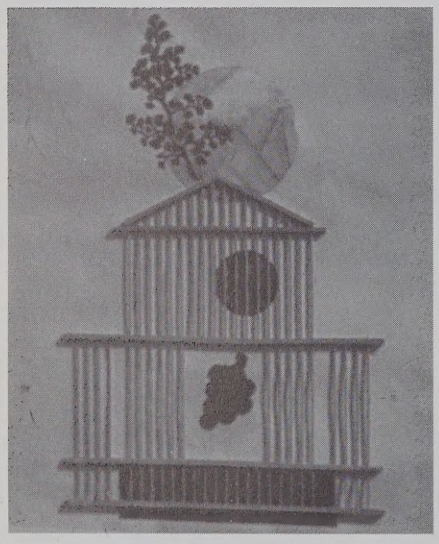
9.

PAINTINGS

6. Fritzner Alphonse (Haitian, 20th century). *Seated Woman with Vase.* 20" x 24". Signed. *N99.189. One of nineteen paintings discovered missing from a storage facility in Los Angeles, CA on July 14, 1999.

MIXED MEDIA

7. Max Ernst (German, 1891-1976). *The Cage,* 1965. Collage on paper. 22" x 18 1/2 ". *N99.185. Lost in transit between Greenwich, CT and Bridgehampton, NY in August 1997.



7.

10.

ASIAN ART

The following items are among at least 162 works of art missing from the Dr. Paul Singer Collection of Chinese Art in the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC.

8. *Marble lion* (Tang, 8th century). 17.0 H (6 11/16) [1214]

9. *Jade garment hook* (Western Han, 2d century B.C.). 5.5 L (2 1/8) [763]

10. *Bronze corner fitting with silver inlay* (Eastern Zhou, 4th century B.C). 8.6 H (3 3/8) [570]

8.

11.

NATIVE AMERICAN ARTIFACTS

11. Paleolithic Indians (4,000-6,000 B.C.). *Axe Head.* Stone. Gray with a wide groove and an elongated poll (the opposite end of the blade). Taken from the Fonthill Museum in Doylestown, PA on January 24, 2000. (Photo shows an axe head similar to the one reported missing.)

Recovered Art

In February Swiss police reported the recovery of seven Picasso works, including the two paintings shown below, stolen in October 1994 from the Max Bollag Gallery in Zurich. The seven works were valued at $44 million. The two paintings shown had previously been stolen from the gallery in an unrelated theft in 1991 and recovered in February 1992. *L94.1384:

1. Pablo Picasso (Spanish, 1881-1973). *Christ of Montmartre*, 1904. Watercolor, pen and ink. 36.0 x 26.0 cm.

2. *Head of a Woman*, 1906. Gouache and ink on paper. 47.0 x 31.0 cm. Signed l/r Picasso.

1.

These two paintings, stolen from the Victoria and Albert Museum in London in 1998, were recovered in January when three men tried to sell them to undercover policemen. *L98.2551:

John Constable (English, 1776-1837). Two sketches for finished oil paintings. 3. *Dedham Mill and Lock*, ca.1810-15, and

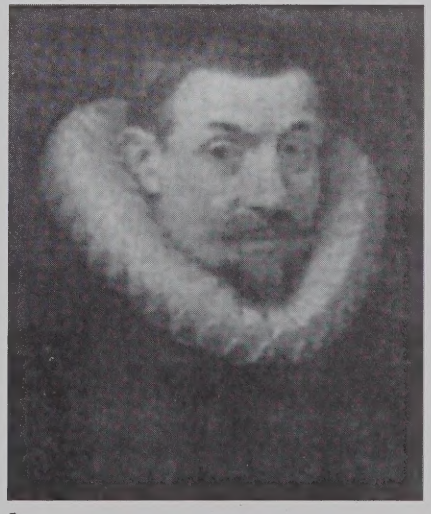
4. *The Valley Farm*, ca.1835. Each 8" x 6".

2.

5. Peter Paul Rubens (Flemish, 1577-1640). *Man Wearing a Ruff*. Oil on panel. 91 x 61 cm. The FBI recovered this painting after tracing it to a New Jersey art collector. The painting disappeared in Belgium in June 1992 along with the two men to whom the original owner had loaned the work as collateral.

3.

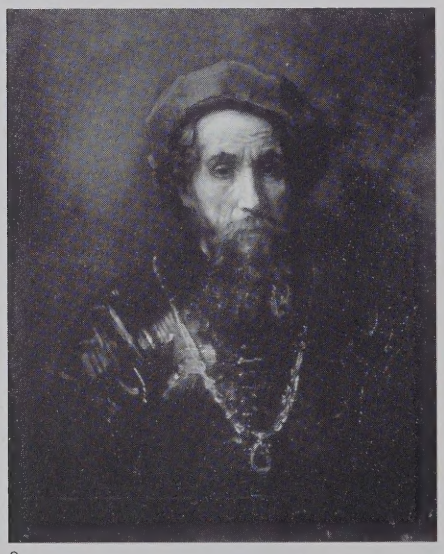
4.



5.

6.

7.



8.

The following three paintings, stolen on Christmas Eve in 1978, were recovered in New York in 1999 and returned to the Fine Arts Museums of San Francisco in February 2000. *N78.213. See story on p. 6, this issue.

6. Attrib. to Aert van der Neer (Dutch, 1603-77). *River Scene at Night.* Oil on panel. 22 1/8" x 32 1/4".

7. Anthonie de Lorme (Dutch, c.1610-73). *Interior of the Church of St. Lawrence, Rotterdam.* Oil on panel. 37 1/4" x 25 1/4".

8. Follower of Rembrandt (Dutch, 17th century). *Portrait of a Man with Red Cap and Gold Chain* (known as *Portrait of a Rabbi*). Oil on canvas. 31" x 25 1/2". Signed and dated "Rembrandt, 1657."

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Recovered

9. Paul Cézanne (French, 1839-1906). *Bouilloire et Fruits*, ca.1890-94. Oil on canvas. 50.16 x 61 cm. *N78.39.1. Recovered in Europe with the help of the ALR in October 1999 and sold at auction at Sotheby's in London, December 1999. One of seven works belonging to Dr. Harry Bakwin stolen in Lenox, MA in 1978. See *Art Theft Archive Newsletter*, January 1979.

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